A

Ling Peek Hoe & Anor v Ding Siew Ching & Ors

B

HIGH COURT (IPOH) — CIVIL SUIT NOS (M1) 22–203 OF 2006 AND (M3) 22–45 OF 2008
SU TIANG JOO JC
4 FEBRUARY 2022

C

Civil Procedure — Damages — Assessment of damages — Finding of liability premised on fraud — Plaintiffs obtained judgment for special damages, general damages, punitive and exemplary damages to be assessed — Whether plaintiffs could claim special damages for losses that were not specifically pleaded — Whether legal fees were claimable by plaintiffs — Whether special damages claimed by plaintiffs were adequately proven — Whether amount claimed for general damages, punitive or exemplary damages was fair and reasonable — Whether plaintiffs to prove how much was to be claimed from each defendant

D

In 2006 the plaintiffs commenced a legal action against the defendants premised on fraud. The learned trial judge pronounced judgment favouring the plaintiffs ('the judgment') and found the defendants liable for the fraudulent transfer, which was facilitated by the first defendant, an advocate and solicitor, of the first plaintiff's properties to the third and fifth defendants. The properties that were fraudulently transferred consisted of the first plaintiff's lands and the first plaintiff's shophouse. Six years later, the plaintiffs obtained a judgment for special damages, general damages as well as punitive and exemplary damages to be assessed. In between the commencement of the suit at the High Court in 2006 and the trial as well as in between the trial and assessment of damages, there were appeals to the Court of Appeal and to the Federal Court. After the Federal Court, there were three applications to review the decision of the Federal Court with the second and third review application struck out for abuse of process of court and the defendants and their lead counsel found guilty of contempt of court. The defendants submitted, inter alia, that the plaintiffs had failed to plead the exact amount of loss claimed and asserted that the omission by the plaintiffs to apply to amend the statement of claim to particularise their claim for special damages was fatal to their claim and thus the entire claim of RM3,450,051.76 stood dismissed ('the pleading point'). The issues were: (a) whether the plaintiffs could claim special damages for losses that were not specifically pleaded; (b) whether legal fees were claimable by the plaintiffs; (c) whether the special damages claimed by the plaintiffs were adequately proven; (d) whether the amount claimed for general damages was fair and reasonable; and (e) whether the amount claimed for punitive or exemplary damages was fair and reasonable. The first defendant raised a further issue that it was for the plaintiffs to prove how much was to be

E

F

G

H

I

claimed from each defendant. However, the second to fifth defendants disagreed and submitted it should be apportioned equally as between the first defendant and the second to fifth defendants.

Held:

(1) Based upon the principle of res judicata the pleading point could not be entertained by the court. Substantive justice would not be served to have the claim for special damages dismissed purely on this pleading point. In the trial leading to the judgment and the appeals against the judgment before the Court of Appeal and the Federal Court, the pleading point was not taken. It was, therefore, too late now for the defendants to take up the pleading point, it being res judicata. The exact amount sought by way of special damages was set out in the plaintiffs' affidavit with the defendants filing their respective affidavits making replies thereto before the assessment of damages. The affidavits filed and exchanged on the damages sought with the evidence marshalled to support the claim duly set out therein, were as good as pleadings (see paras 20, 27 & 35–36).

(2) On giving credit for any benefit received, the plaintiffs conceded that the sum of RM140,000 received by them by way of costs as well as a double claim for refresher of RM4,000 for a court attendance should be deducted from the legal expenses as they were claiming under special damages. In the circumstances, the claim for the legal fees and expenses on an indemnity basis by way of special damages was appropriate (see paras 51–52).

(3) The challenge on the quantum of legal charges point was without merit. When the plaintiffs initiated the suit on 18 August 2006, they submitted to due process which allowed a party aggrieved by any decision at first instance to appeal, commonly referred to as – one strike two appeals. The parties took their rights of appeal seriously as could be seen from the numerous appeals filed and, in fact, they initiated and pursued three review applications in the Federal Court. Having the benefit of hindsight to mount a challenge on excessive and unforeseeable legal charges after 15 years of litigation when the defendants had been involved in the same including the appeals and three review applications at the Federal Court was wholly without merit (see paras 65 & 68).

(4) The courts had the discretion to allow legal fees incurred by an aggrieved party, in addition to the costs awarded. Legal fees were a specie of special damages which were claimable and on top of costs. Further, in an assessment of damages for fraud, all losses were claimable on the basis of full indemnity. There was fraud found against the defendants after the trial by the High Court leading to the judgment and this judgment was restored by the Federal Court. Therefore, the plaintiffs were entitled to the legal fees and expenses on a full indemnity basis. Although the legal

charges had not been paid in full, they had been incurred pursuant to the various agreements entered into between the plaintiffs and their solicitors ie they were actual costs. In the circumstances, with the plaintiffs to be indemnified against the legal charges incurred, the plaintiffs' claim for the legal charges were awarded but in the sum of RM2,604,000 by way of special damages (see paras 78, 80–82, 90 & 113).

(5) With the reliefs granted in the judgment after the learned trial judge had decided that the shophouse had been transferred from the first plaintiff to the third to fifth defendants fraudulently and therefore being null and void, this would re-instate the first plaintiff's title and displace any right of the third to fifth defendants to deal with the property, including to resell it to the second plaintiff. Therefore, the efforts and expenses incurred to recover the shophouse were reasonable and ought to be indemnified and it did not lie in the mouths of the defendants to complain that such efforts were unreasonable when the situation was one brought about by themselves and which the learned trial judge held to have been done fraudulently. In the circumstances, the plaintiffs were awarded the sum of RM464,433.16 incurred by the second plaintiff to recover the shophouse (see paras 125–126).

(6) The challenge to the travelling expenses claim of RM16,000 premised on double claims, lack of petrol bills, toll receipts and incurring unnecessary expenses by filing/serving documents by hand instead of using the courier service, were without merit on the grounds that there were no toll for trips from Sitiawan to Ipoh; for trips to Putrajaya payment of toll charges using the Touch n Go facility would not yield any receipts and to save costs the second plaintiff used his own car and by driving himself for the trips undertaken as well as to transport the plaintiffs' counsel for the numerous court attendances without any claim for remuneration for the services, was fair and reasonable. In the circumstances, the claim for RM16,000 for travelling expenses was allowed (see paras 134–135).

(7) Having defrauded the plaintiffs of their properties through trickery and cheating as found by the learned trial judge, refusing to obey the court orders which saw them being found guilty of contempt of court on more than one occasion and in the process taking the plaintiffs through 15 years of litigation with its attendant feelings of anxiety as and when an application was being pursued, heard and seemingly disposed of only to be met with an appeal and yet more applications with more appeals and in the process, with both plaintiffs losing their wives, one through disease and another through divorce proceedings, the RM1m sought by the plaintiffs was reasonable for all the mental distress and hardship suffered by them (see para 152).

(8) Considering all the facts and circumstances and the conduct of the defendants pre and post judgment, the plaintiffs' claim for a further sum

of RM1m as punitive or exemplary damages against the defendants was reasonable so as 'to teach the wrongdoer that tort does not pay' (see para 160).

(9) The judgment did not say that the damages ought to be apportioned as between the defendants inter se. The second to fifth defendants could have availed themselves of the provision of s 10 of the Civil Law Act 1956 and O 16 r 1(1)(c) of the Rules of Court 2012 for this issue to be determined at trial, but they did not. Therefore, the second to fifth defendants' prayer for the liability of the defendants to be apportioned at this stage without the benefit of this issue having been tried was declined (see para 167).

(10) The damages payable by the defendants to the plaintiffs was assessed to be RM5,135,951.76 with interest thereon at 5%pa from the date of the filing of the writ until the date of full realisation with costs (see para 168).

[Bahasa Malaysia summary

Pada tahun 2006 plaintif memulakan tindakan undang-undang terhadap defendan berdasarkan penipuan. Hakim bicara yang bijaksana menyatakan penghakiman yang memihak kepada plaintif ('penghakiman') dan mendapati defendan bertanggungjawab ke atas pemindahan penipuan, yang dibantu oleh defendan pertama, seorang peguambela dan peguamcara, hartanah plaintif pertama kepada defendan ketiga dan kelima. Hartanah yang dipindah milik secara penipuan terdiri daripada tanah plaintif pertama dan rumah kedai plaintif pertama. Enam tahun kemudian, plaintif memperoleh penghakiman untuk ganti rugi khas, ganti rugi am serta ganti rugi punitif dan teladan untuk dinilai. Di antara permulaan saman di Mahkamah Tinggi pada 2006 dan perbicaraan serta di antara perbicaraan dan penilaian ganti rugi, terdapat rayuan kepada Mahkamah Rayuan dan Mahkamah Persekutuan. Selepas Mahkamah Persekutuan, terdapat tiga permohonan untuk semakan keputusan Mahkamah Persekutuan dengan permohonan semakan kedua dan ketiga dibatalkan kerana menyalahgunakan proses mahkamah dan defendan dan peguam utama mereka didapati bersalah menghina mahkamah. Defendan-defendan berhujah, antara lain, bahawa plaintif telah gagal untuk memplid jumlah sebenar kerugian yang dituntut dan menegaskan bahawa peninggalan oleh plaintif untuk memohon untuk meminda pernyataan tuntutan untuk mengkhususkan tuntutan mereka untuk ganti rugi khas adalah fatal kepada tuntutan mereka dan oleh itu keseluruhan tuntutan RM3,450,051.76 ditolak ('perkara pliding'). Isu-isu adalah: (a) sama ada plaintif boleh menuntut ganti rugi khas untuk kerugian yang tidak diplid secara khusus; (b) sama ada yuran guaman boleh dituntut oleh plaintif; (c) sama ada ganti rugi khas yang dituntut oleh plaintif telah dibuktikan dengan secukupnya; (d) sama ada jumlah yang dituntut untuk ganti rugi am adalah adil dan munasabah; dan (e) sama ada jumlah yang dituntut untuk ganti rugi punitif atau teladan adalah adil dan munasabah. Defendan pertama

membangkitkan isu lanjut bahawa adalah untuk plaintif membuktikan berapa banyak yang perlu dituntut daripada setiap defendan. Walau bagaimanapun, defendan kedua hingga kelima tidak bersetuju dan mengemukakan ia harus dibahagikan sama seperti antara defendan pertama dan defendan kedua hingga kelima.

Diputuskan:

(1) Berdasarkan prinsip res judicata perkara pliding tidak boleh dilayan oleh mahkamah. Keadilan substantif tidak akan dilaksanakan jika tuntutan untuk ganti rugi khas ditolak semata-mata atas perkara pliding ini. Dalam perbicaraan yang membawa kepada penghakiman dan rayuan terhadap penghakiman di hadapan Mahkamah Rayuan dan Mahkamah Persekutuan, perkara pliding tidak diambil. Oleh itu, sudah terlambat sekarang untuk defendan-defendan menggunakan perkara pliding, ia adalah res judicata. Jumlah sebenar yang dipohon dengan cara ganti rugi khas telah dinyatakan dalam afidavit plaintif dengan defendan memfailkan afidavit masing-masing membuat jawapan sebelum penilaian ganti rugi. Afidavit yang difailkan dan ditukar atas ganti rugi yang dipohon dengan bukti yang disusun untuk menyokong tuntutan yang dinyatakan di dalamnya, adalah sama baiknya dengan pliding (lihat perenggan 20, 27 & 35–36).

(2) Berkenaan dengan apa-apa faedah yang diterima, plaintif mengakui bahawa jumlah RM140,000 yang diterima oleh mereka melalui kos serta tuntutan berganda untuk penyegaran sebanyak RM4,000 untuk kehadiran mahkamah hendaklah ditolak daripada perbelanjaan undang-undang seperti yang mereka tuntut di bawah ganti rugi khas. Dalam keadaan tersebut, tuntutan untuk yuran guaman dan perbelanjaan atas dasar indemniti melalui ganti rugi khas adalah sesuai (lihat perenggan 51–52).

(3) Cabaran mengenai kuantum caj guaman adalah tanpa merit. Apabila plaintif memulakan saman pada 18 Ogos 2006, mereka berserah kepada proses wajar yang membenarkan pihak yang terkilan dengan sebarang keputusan pada peringkat pertama untuk merayu, yang biasanya dirujuk sebagai — satu pembatalan dua rayuan. Pihak-pihak mengambil serius hak rayuan mereka seperti yang dapat dilihat daripada banyak rayuan yang difailkan dan, hakikatnya, mereka memulakan dan meneruskan tiga permohonan semakan di Mahkamah Persekutuan. Dengan kelebihan pengetahuan untuk mencabar caj guaman yang berlebihan dan tidak dijangka selepas 15 tahun litigasi apabila defendan telah terlibat dalam perkara yang sama termasuk rayuan dan tiga permohonan semakan di Mahkamah Persekutuan adalah tanpa merit (lihat perenggan 65 & 68).

(4) Mahkamah mempunyai budi bicara untuk membenarkan yuran guaman

yang ditanggung oleh pihak yang terkilan, sebagai tambahan kepada kos yang diberikan. Yuran guaman ialah sejenis ganti rugi khas yang boleh dituntut dan di atas kos. Selanjutnya, dalam penilaian ganti rugi untuk penipuan, semua kerugian boleh dituntut berdasarkan indemniti penuh. Terdapat penipuan yang ditemui terhadap defendan selepas perbicaraan oleh Mahkamah Tinggi yang membawa kepada penghakiman dan penghakiman ini dikembalikan oleh Mahkamah Persekutuan. Oleh itu, plaintif berhak menerima yuran guaman dan perbelanjaan atas dasar indemniti penuh. Walaupun caj guaman belum dibayar sepenuhnya, ia telah ditanggung menurut pelbagai perjanjian yang dibuat antara plaintif dan peguam cara mereka iaitu kos sebenar. Dalam keadaan itu, dengan plaintif akan membayar terhadap caj guaman yang ditanggung, tuntutan plaintif untuk caj guaman telah diawardkan tetapi dalam jumlah RM2,604,000 melalui ganti rugi khas (lihat perenggan 78, 80–82, 90 & 113).

(5) Dengan relif yang diberikan dalam penghakiman selepas hakim bicara yang bijaksana telah memutuskan bahawa rumah kedai itu telah dipindahkan daripada plaintif pertama kepada defendan ketiga kepada defendan kelima secara penipuan dan oleh itu terbatal dan tidak sah, ini akan mengembalikan semula hak milik plaintif pertama dan menggantikan mana-mana hak defendan ketiga hingga kelima untuk berurusan dengan harta itu, termasuk menjualnya semula kepada plaintif kedua. Oleh itu, usaha dan perbelanjaan yang dibelanjakan untuk mendapatkan semula rumah kedai itu adalah munasabah dan patut diberi ganti rugi dan tidak terletak di mulut defendan untuk mengadu bahawa usaha tersebut adalah tidak munasabah apabila keadaan itu dilakukan oleh mereka sendiri dan di mana hakim bicara yang bijaksana memutuskan ia telah dilakukan secara penipuan. Dalam keadaan tersebut, plaintif telah diberikan sejumlah RM464,433.16 yang ditanggung oleh plaintif kedua untuk mendapatkan semula rumah kedai tersebut (lihat perenggan 125–126).

(6) Cabaran terhadap tuntutan perbelanjaan perjalanan RM16,000 berdasarkan tuntutan berganda, kekurangan bil petrol, resit tol dan menanggung perbelanjaan yang tidak perlu dengan memfailkan/menyampaikan dokumen dengan tangan dan bukannya menggunakan perkhidmatan kurier, adalah tanpa merit atas alasan bahawa tiada tol bagi perjalanan dari Sitiawan ke Ipoh; untuk perjalanan ke Putrajaya pembayaran caj tol menggunakan kemudahan Touch n Go tidak akan menghasilkan sebarang resit dan untuk menjimatkan kos plaintif kedua menggunakan kereta sendiri dan dengan memandu sendiri untuk perjalanan yang dijalankan serta membawa peguam plaintif untuk banyak kehadiran mahkamah tanpa sebarang tuntutan untuk imbuhan untuk perkhidmatan, adalah adil dan munasabah. Dalam keadaan tersebut, tuntutan RM16,000 untuk perbelanjaan

perjalanan dibenarkan (lihat perenggan 133–134).

(7) Setelah menipu plaintif harta mereka melalui muslihat dan penipuan seperti yang didapati oleh hakim bicara yang bijaksana, enggan mematuhi perintah mahkamah yang menyaksikan mereka didapati bersalah menghina mahkamah lebih daripada satu kali dan dalam proses mengambil plaintif melalui litigasi selama 15 tahun dengan perasaan cemas apabila permohonan sedang diusahakan, didengar dan seolah-olah dilupuskan hanya untuk dipenuhi dengan rayuan dan lebih banyak permohonan dengan lebih banyak rayuan dan dalam proses, dengan kedua-dua plaintif kehilangan isteri mereka, satu melalui penyakit dan satu lagi melalui prosiding perceraian, RM1 juta yang diminta oleh plaintif adalah munasabah untuk semua tekanan mental dan kesusahan yang dialami oleh mereka (lihat perenggan 152).

(8) Memandangkan semua fakta dan keadaan serta kelakuan defendan sebelum dan selepas penghakiman, tuntutan plaintif untuk jumlah tambahan RM1 juta sebagai ganti rugi punitif atau teladan terhadap defendan adalah munasabah supaya 'to teach the wrongdoer that tort does not pay' (lihat perenggan 160).

(9) Penghakiman itu tidak mengatakan bahawa ganti rugi harus dibahagikan antara defendan sesama sendiri. Defendan kedua hingga kelima boleh menggunakan peruntukan s 10 Akta Undang-Undang Sivil 1956 dan A 16 k 1(1)(c) Kaedah-Kaedah Mahkamah 2012 untuk isu ini diputuskan dalam perbicaraan, tetapi mereka tidak melakukannya. Oleh itu, permohonan defendan kedua hingga kelima agar liabiliti defendan dibahagikan pada peringkat ini tanpa faedah isu ini dibicarakan telah ditolak (lihat perenggan 167).

(10) Ganti rugi yang perlu dibayar oleh defendan kepada plaintif telah ditaksir sebanyak RM5,135,951.76 dengan faedah ke atasnya pada 5% setahun dari tarikh pemfailan writ sehingga tarikh realisasi penuh dengan kos (lihat perenggan 168).]

Cases referred to

Abdul Razak bin Datuk Abu Samah v Shah Alam Properties Sdn Bhd and another appeal [1999] 2 MLJ 500, CA (refd)

Akai Holdings Ltd (in compulsory liquidation) v Everwin Dynasty Ltd and others [2016] 3 HKC 307 (refd)

Alex Ting Kuang Kuo @ Ting Kuang Kuo v Credit Corp (M) Sdn Bhd [2012] MLJU 1070, HC (folld)

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189; [1995] 3 CLJ 783, SC (refd)

Brassart Jacqueline Marcelle v R & P International Accounting Affairs Ltd and others [2017] HKCU 1324 (refd)

Chai Chee Chin and Others v Tetuan Zahari Ong & Co [2005] MLJU

623; [2006] 8 CLJ 84, HC (refd)
Dadourian Group International Inc and others v Simms and others [2006] EWHC 2973 (Ch), Ch D (refd)
Doyle v Olby (Ironmongers) Ltd and others [1969] 2 All ER 119, CA (refd)
Eu Sim Chuan @ Eu Sam Yan & Anor v Kris Angsana Sdn Bhd [2007] 1 MLJ 734, HC (refd)
Forever Up Holdings Ltd v Tong Yan Wa [2019] 5 HKC 478; [2018] HKCFI 2775 (refd)
Golden Star & Ors v Ling Peek Hoe & Anor and other appeals [2015] 6 MLJ 874; [2015] 1 LNS 940, CA (refd)
Golden Star & Ors v Ling Peek Hoe & Ors [2021] 2 MLJ 259; [2021] 3 CLJ 443, FC (refd)
Goo Sing Kar v Dato' Lim Ah Chap & Ors [2013] 3 MLJ 374, CA (refd)
HSBC Bank Malaysia Bhd (formerly known as Hongkong Bank (M) Bhd) v Tirathrai Sdn Bhd (formerly known as T Jethanand Sdn Bhd) [2009] 7 MLJ 168; [2009] 1 CLJ 286, HC (refd)
Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd [1996] 2 MLJ 57; [1997] 2 CLJ 104, CA (refd)
Heritage Grand Vacation Club Bhd v Pacific Fantasy Vacation Sdn Bhd [2016] 4 MLJ 389, CA (refd)
Janagi v Ong Boon Kiat [1971] 2 MLJ 196 (refd)
Khairul Sham bin Ahmad & Anor v Yesudass a/l Michaelsamy [2005] 2 MLJ 679, HC (folld)
Kris Angsana Sdn Bhd v Eu Sim Chuan @ Eu Sam Yan & Anor [2007] 5 MLJ 13; [2007] 4 CLJ 293, CA (refd)
Kuan Pek Seng @ Alan Kuan v Robert Doran & Ors and other appeals [2013] 2 MLJ 174, CA (refd)
Lai Foh & Sons Sdn Bhd v Skrine & Co (didakwa sebagai sebuah firma) [2001] MLJU 250, HC (distd)
Lau Yang Kim v Rescom Australia Sdn Bhd & Anor [2020] MLJU 105; [2020] 4 CLJ 130, HC (refd)
Lembaga Kumpulan Wang Simpanan Pekerja v Edwin Cassian a/l Nagappan @ Marie [2021] 5 MLJ 253; [2021] 7 CLJ 823, FC (refd)
Lim Tee Hin v Ledchumanan a/l Nagappan [2004] 7 MLJ 212; [2004] 3 CLJ 285, HC (refd)
Ling Peek Hoe & Anor v Ding Siew Ching and another appeal [2017] 5 MLJ 385; [2017] 7 CLJ 641, FC (refd)
Lua & Mansor (suing as a firm) v Tan Ah Kim [2017] 3 MLJ 371; [2017] 2 CLJ 175, CA (refd)
MD Biomedical Engineering (M) Sdn Bhd v Goh Yong Khai [2021] 5 MLJ 408; [2021] 6 CLJ 30, CA (refd)
MSIG Insurance (M) Bhd v Matrix Cooling (M) Sdn Bhd [2020] MLJU 2091, HC (distd)
Minty Holdings Sdn Bhd v JB Properties Sdn Bhd (SK Brothers Realty, third party) [1998] 7 MLJ 182; [1998] 1 LNS 214, HC (refd)

Ng Kim Hoong & Anor v Tetuan Yh Teh & Quek [2015] 10 CLJ 561, HC (refd)
Non-No Fashion Wholesale Limited v Chung Kam Wing And Shu Man Lee (by original action) and others [2001] HKCU 838 (refd)
Ong Ah Long v Dr S Underwood [1983] 2 MLJ 324, FC (distd)
Pacific Electric Wire & Cable Co Ltd v Texan Management Ltd [2013] HKEC 1623 (refd)
Rookes v Barnard [1964] 1 All ER 367, HL (refd)
Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors [2017] MLJU 557; [2017] 1 LNS 500, CA (refd)
Seto Wai Leung Benny v Se-to Shuk Yee and others [2018] HKCU 4242; [2018] HKCFI 2673 (refd)
Shen & Sons Sdn Bhd v Jutawarna Development Sdn Bhd & Ors [2016] 7 MLJ 183, HC (distd)
Sia Hiong Tee & Ors v Chong Su Kong & Ors [2015] 4 MLJ 188; [2015] 8 CLJ 1173, FC (refd)
Sigma Glove Industries Sdn Bhd & Ors v Ong Chin Kok & Anor [2019] MLJU 1045; [2019] 1 LNS 1370, HC (refd)
Sim Thong Realty Sdn Bhd v Teh Kim Dar @ Tee Kim [2003] 3 MLJ 460, CA (refd)
Singh and another v Observer Ltd [1989] 3 All ER 777, CA (refd)
Sitti Rajumah & Anor v Mohd Rafiuddin bin Elmin [1996] MLJU 86; [1996] 4 CLJ 274, HC (refd)
Sonic Finance Inc & Anor v Halim bin Mohammad & Ors [2019] MLJU 1887, HC (refd)
Takako Sakao (f) v Ng Pek Yuen (f) & Anor (No 2) [2010] 2 MLJ 181, FC (folld)
Tan Thiam Hock v Corrugated Offset Packaging (M) Sdn Bhd & Anor [2011] 1 LNS 592, HC (refd)
Taz Logistics Sdn Bhd v Taz Metals Sdn Bhd & Ors [2020] 10 MLJ 791; [2020] 5 CLJ 426, HC (refd)
Tetuan Azim, Tunku Farik & Wong v Tetuan Ong Partnership [2021] 6 MLJ 464; [2021] 10 CLJ 258, CA (refd)
Thompson v Commissioner of Police of the Metropolis; Hsu v Same [1997] 3 WLR 403, CA (refd)
Trans Elite Equipment Rental Sdn Bhd v PSC-Naval Dockyard Sdn Bhd [2003] 4 MLJ 30; [2003] 1 MLRH 706; [2003] 4 CLJ 270, HC (folld)
UDA Holdings Bhd (formerly known as Perbadanan Pembangunan Bandar) v Melewar Leisure Sdn Bhd (formerly known as Harta Bumi Sdn Bhd) [2009] 2 MLJ 408, HC (distd)
Yap Boon Hwa v Kee Wah Soong [2020] 1 MLJ 37, CA (refd)
Yap Soo Ping & Anor v Kee Wah Soong [2018] MLJU 1449; [2018] 1 LNS 1020, HC (refd)
Yii Ping Hiong and Anor v Tseng Choon Chin @ Tay Bak Hui and Others [2009] MLJU 683; [2009] 1 LNS 756, HC (refd)

Legislation referred to

Civil Law Act 1956 ss 10, 11(1)
Legal Profession Act 1976 s 116(1), (2), 121
Penal Code ss 191, 192, 193
Rules of Court 2012 O 16 r 1(1)(c), O 28 r 8, O 34 r 2(2)(b)(ii), O 37 r 6, O 42 r 12, O 59 r 8

Edmund Lim Yun (Hong Chew King & Co) for the plaintiff.
Su Keong Siew (KS Su & Mah) for the first defendant.
Tan Lee Kiat (with Alison Goh) (Chieng Lum & Assoc) for the second, third, fourth and fifth defendants.

Su Tiang Joo JC:

QUERY

(a) would a party who has suffered a civil wrong be entitled to claim for the legal charges incurred as special damages incurred to redress the wrong? and

(b) would the party be also entitled to claim for general damages for the distress suffered in the course of undergoing legal proceedings to have the wrong redressed?

INTRODUCTION

[1] In 2006 the plaintiffs commenced a legal action against the five defendants premised on fraud. Six years later, after a trial conducted over 36 days, they obtained a judgment for special damages, general damages as well as punitive and exemplary damages to be assessed. The assessment which commenced on 8 February 2021 was interrupted by the COVID-19 pandemic. A total of five days was taken with closing oral submissions presented on 24 November 2021 and decision scheduled for 10 January 2022.

[2] In between the commencement of the suit at the High Court in 2006 and the trial as well as in between the trial and assessment of damages, there were appeals to the Court of Appeal and to the Federal Court. After the Federal Court, there were three applications to review the decision of the Federal Court with the second and third review application struck out for abuse of process of court and the defendants and their lead counsel found guilty of contempt of court.

[3] Over and on top of the trial at the High Court and its related appeals to the Court of Appeal and Federal Court plus three review applications at the Federal Court, there were several contentious interlocutory applications requiring determination by the courts and a trawl through the law reports on

this action will yield an abundant harvest of hits.

BACKGROUND FACTS

[4] On 28 November 2012, the learned trial judge, His Lordship, Hassan bin Ab Rahman JC ('LTJ') pronounced judgment ('the said judgment') (see R41 p 53 para 4 *Jld* 1) favouring the plaintiffs as follows:

> ADALAH DIHAKIMI bahawa perjanjian-perjanjian jualbeli antara plaintif pertama dengan defendan ketiga, keempat dan/atau kelima untuk GM 3896 (dahulu EMR 2358) Lot 2563 dan GM 3895 (dahulu EMR 2359) Lot 2564 kedua-dua Mukim Sitiawan adalah diisytiharkan batal dan tidak sah.
>
> DAN ADALAH DIHAKIMI bahawa borang-borang pindahmilik untuk GM 3896 (dahulu EMR 2358) Lot 2563 dan GM 3895 (dahulu EMR 2359) Lot 2564 kedua-dua Mukim Sitiawan dan PN 104828 Lot 34911 (dahulu HS (D) Dgs 5664 PT 17562) Mukim Sitiawan daripada plaintif pertama kepada defendan ketiga, keempat dan kelima adalah diiystiharkan batal dan tidak sah.
>
> *DAN ADALAH DIHAKIMI bahawa defendan-defendan membayar plaintif-plaintif gantirugi khas, am, punitif dan teladan tertakluk kepada taksiran oleh Pendaftar*.
>
> DAN ADALAH DIHAKIMI bahawa tuntutanbalas defendan ketiga, keempat dan kelima terhadap plaintif pertama adalah ditolak dengan kos.
>
> DAN AKHIRNYA DIHAKIMI bahawa defendan-defendan membayar plaintif-plaintif faedah dan kos tindakan-tindakan ini untuk ditaksir oleh Pendaftar sekiranya tidak dipersetujui oleh plaintif-plaintif dan defendan-defendan.

[5] In summary, the LTJ found all the defendants liable for the fraudulent transfer, which was facilitated by the first defendant, an advocate and solicitor, of the first plaintiff's properties to the third and fifth defendants. The first defendant is the sister of the third to fifth defendants.

[6] The properties that were fraudulently transferred consist of:

(a) the first plaintiff's lands held under issued document of titles GM 3896 Lot 2563 and GM 3895 Lot 2564 both in Mukim Sitiawan ('the Kg Selamat land'); and

(b) the first plaintiff's shophouse held under issued document of title PN 104828 Lot 34911 in Mukim Sitiawan ('the No 59 Taman Ilmu property').

[7] The assessment of damages was carried out over six days. Out of the six days, save for one day, the other five days of hearing were conducted with the aid of remote communication technology using the zoom platform.

[8] A total of ten witnesses were called, five for the plaintiffs, one for first

defendant and four for the second to fifth defendants. The following witness statements (R45-PWS1, R44-PWS2, R46-PWS3, R51-D1WS1, R63-D2WS1, R60-D2WS2, R61-D2WS3) were exchanged with a total of nine agreed bundle of documents (R41-*Jld* 1; R42-*Jld* 2, R43-*Jld* 3, R56-*Jld* 7, R69-*Jld* 9, R50-*Jld* 4, R-*Jld* 5 (BOD of D2 to D5) R62-*Jld* 6, R55-*Jld* 8) filed.

[9] The first defendant was represented by the law firm of M/s KS Su & Mah whereas the second to the fifth defendants were represented by the law firm of M/s Chieng Lum & Associates.

[10] Save for whether the liability is to be borne equally between the first defendant on the one part and the second to the first defendants on the other part, the first defendant adopts the submissions of the second to the fifth defendants.

SUMMARY OF CLAIMS

[11] The following summary of claims made by the plaintiffs are:

(a) special damages:		
(i)	Legal Fees	RM2,918,000
(ii)	Hong Leong Bank Bhd loan for No 59 Taman Ilmu property	RM464,433.16
(iii)	travelling expenses	RM16,000
(iv)	search and miscellaneous expenses	RM51,618.60
(v)	sub-total	RM3,450,051.76
(b) general damages for time spent, mental distress and physical strain the plaintiffs purportedly suffered and endured for the duration of the litigation and all such expenses reasonably incurred in the sum of:		RM1,000,000
(c) punitive and exemplary damages of:		RM1,000,000
Total		RM5,140,151.76

(d) interest on the damages awarded from the date of the filing of the writ and statement of claim (18 August 2006) at 5% pa until full realisation.

SUMMARY OF ISSUES

[12] The bulk of the plaintiffs' claim fall under special damages.

[13] The issues as summarised by learned counsel for the second to fifth defendants are as follows:

(a) whether the plaintiffs can claim special damages for losses that were not specifically pleaded?

(b) whether legal fees are claimable by the plaintiffs?

(c) whether the special damages claimed by the plaintiffs are adequately proven?

(d) whether the amount claimed for general damages is fair and reasonable? and

(e) whether the amount claimed for punitive or exemplary damages is fair and reasonable?

[14] Counsel for the first defendant raised a further issue during closing submissions for the assessment of damages that it is for the plaintiff to prove how much is to be claimed from each defendant. However, counsel for the second to fifth defendants disagreed and submitted it should be apportioned equally as between the first defendant (50%) and the second to fifth defendants (50%).

PLEADING POINT

[15] The defendants submit that save for a general prayer for special and general damages to be assessed at para 9 of the statement of claim which is reproduced below, the plaintiffs have failed to plead the exact amount of loss claimed:

> 9. Akibat daripada perbuatan Defendan-Defendan di atas, Plaintif-Plaintif telah mengalami kerugian dan kehilangan, di mana Plaintif-Plaintif menuntut:
>
> 9.1 Deklarasi bahawa perjanjian jualbeli yang didakwa untuk No 2563 and 2564 Kg. Selamat dan No 31 Taman Ilmu adalah batal dan tidak sah;
>
> 9.2 Deklarasi bahawa Perjanjian Sewa Olok-Olok tersebut adalah batal dan tidak sah;
>
> 9.3 Deklarasi bahawa Borang Pindahmilik yang didakwa untuk 3 Hartanah tersebut dan No 31 Taman Ilmu daripada P1 kepada D2 dan/atau pemilik-pemiliknya adalah batal dan tidak sah atas sebab salahnyata, frod, pemalsuan dan/atau instrument tidak cukup atau tidak sah;
>
> 9.4 Perintah lanjutan berikutan deklarasi-deklarasi tersebut di atas;

9.5 *Gantirugi khas dan am untuk ditafsirkan*;

9.6 Gantirugi punitif dan teladan untuk ditafsirkan;

9.7 Faedah

9.8 Kos; dan

9.9 Perintah atau relif lain yang Mahkamah Mulia ini anggap sesuai dan berpatutan.

[16] It would be convenient to deal with the pleading point raised by the defendants at this juncture. They assert that the omission by the plaintiffs to apply to amend the statement of claim dated 17 August 2006 to particularise their claim for special damages is fatal to their claim. Therefore, they submit that the entire claim of RM3,450,051.76 stands dismissed (R83 para 35).

[17] The following authorities cited by the defendants for the rule on pleadings and the principles extracted therefrom are set out hereunder:

(a) in the Federal Court case of *Ong Ah Long v Dr S Underwood* [1983] 2 MLJ 324, Syed Agil Barakbah FJ held that:

> It is a well-established principle that special damages in contrast to general damages, have to be specifically pleaded and strictly proved.
>
> The reason that special damages have to be specifically pleaded is to comply with its object which is to crystallise the issue and to enable both parties to prepare for trial (per Edmund Davies, LJ in *Domsalla v Barr* [1969] 1 WLR 630 at p 635. In special damages claims the exact loss must be pleaded where the precise amount of item of damages has become clear before the trial either because it has already occurred and so become crystallised or because it can be measured with complete accuracy (*MacGregoron Damages* (14th Ed) p 1012 para 1498). The purpose is to put the defendants on their guard and tell them what they have to meet when the case comes on trial (per Cotton, LJ in *Phillips v Phillips* (1878) 4 QBD 127 at p 139).

(b) in the High Court case of *Shen & Sons Sdn Bhd v Jutawarna Development Sdn Bhd & Ors* [2016] 7 MLJ 183 S Nantha Balan J (now JCA) held that:

> [68] ... In the present case, there was no attempt by the plaintiff to amend the statement of claim prior to the hearing of assessment of damages. Before me, counsel for the plaintiff said that it was not necessary to plead special damages and in any event, if the other side had raised an objection, then she would have made the necessary application to amend. Thus, she complained that she had been deprived of the opportunity to amend the statement of claim because the other side raised no objections in respect of the lack of pleading on special damages. She said that in any event, there is no prejudice to D2 and D3 as they knew exactly what was being claimed as these were all stated in the witness statements of the plaintiff's witnesses.

> [69] In my view, the plaintiff cannot use the silence or inertia of counsel for D2 and D3 as an excuse for not amending the statement of claim as the rule relating to pleading special damages is a mandatory legal requirement and if the statement of claim is inadequate as is clearly the case in these appeals, then the plaintiff has taken an unnecessary risk in proceeding with the hearing of assessment with absolutely nothing in the statement of claim in relation to special damages. That was a strategic mistake on their part.
>
> [70] The body of case law is clear and unambiguous. The procedural rule relating to pleading special damages is simple but strict. Special damages must be specifically pleaded. If the statement of claim is devoid of any pleading on special damages, then evidence on specials damages cannot be adduced. I cannot over emphasise that the rule is strict in its application. It may have been different if parties had gone on record to state unequivocally that no objection will be taken to the inadequacy of pleadings in respect of special damages. Had that been done, then the other side would be deemed to have 'waived' their right to object, but not otherwise. Here, D2 and D3's silence cannot be equated with consent or be deemed as a waiver.

(c) in *Lau Yang Kim v Rescom Australia Sdn Bhd & Anor* [2020] MLJU 105; [2020] 4 CLJ 130 Amarjeet Singh JC held as follows:

> (1) Special damages, in contrast to general damages, have to be specifically pleaded and strictly proved. Legal fees are ascertained expenses and therefore, particularity is necessary to warn the defendant of what is being claimed or the claims that he will be confronted with at the trial. The DR erred in law when awarding, as general damages, the legal fees and related legal expenses incurred by the plaintiff.

(d) that a party is not allowed to rectify his own omission to specifically plead special damages by relying on witness statements (in this case affidavits) to improve the defective pleading with reliance placed upon the High Court case of *UDA Holdings Bhd (formerly known as Perbadanan Pembangunan Bandar) v Melewar Leisure Sdn Bhd (formerly known as Harta Bumi Sdn Bhd)* [2009] 2 MLJ 408 where Abdul Malik Ishak J held that:

> [171] I would answer this question in the negative for the following reasons:
>
> (i) Melewar did not be plead the particulars of loss and damage in its pleadings and therefore must be precluded from relying on the evidence adduced to improve its pleadings (*Yew Wan Leong*'s case) ...

(e) the aforesaid case *UDA Holdings Bhd* was adopted by the recent High Court case of *MSIG Insurance (M) Bhd v Matrix Cooling (M) Sdn Bhd* [2020] MLJU 2091 where Ong Chee Kwan JC held that:

> [56] Flowing from the plaintiff's own failure to plead their particulars of special damages in their statement of claim, they shall be precluded from relying on the evidence adduced (if any, which is denied) during trial to improve their pleading and/or claim ...

A

> [57] S Nantha Balan J (as he then was) in the case of *Shen & Sons Sdn Bhd v Jutawarna Development Sdn Bhd & Ors* [2016] 7 MLJ 183 at p 192 ruled that the omission to plead special damages is not in compliance with O 18 r 12(1) and (2) of the Rules of Court 2012 and is fatal, notwithstanding that there is evidence to prove the quantum.

B

[18] Reliance was also placed by the defendants upon the oft-quoted authority of *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196 decided by Sharma J for the trite principle that parties are bound by their pleadings.

C

[19] The defendants proceeded to submit that this honourable court should not help to improve the plaintiffs' case and that the plaintiffs' case must stand or fall based squarely on what has been pleaded. Reliance was placed upon the decision of the Court of Appeal where Justice Hamid Sultan JCA in the case of

D

Heritage Grand Vacation Club Bhd v Pacific Fantasy Vacation Sdn Bhd [2016] 4 MLJ 389 held that:

> [4] It is well established that it is not the function of the court to build a case for the plaintiff/defendant inconsistent with the pleaded case. In *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152, the Supreme Court had in strong terms held, and which still stands as a 'gold standard' in pleading rules and evidence, as follows:

E

> > *It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point.* In disposing of a suit or matter *involving a disputed question of fact, it is not proper for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings.* The trial of a suit should be confined to the pleas on which the parties are at variance. (Emphasis added.)

F

[20] In my view, in the circumstances of this case based upon the principle of

G

res judicata the pleading point cannot be entertained by this court. And for the reasons that now follow, substantive justice will not be served to have the claim for special damages dismissed purely on this pleading point ('pleading point').

Res judicata

H

[21] The said judgment leading to the assessment exercise provide as follows (R41 p 53):

> *DAN ADALAH DIHAKIMI bahawa defendan-defendan membayar plaintif-plaintif khas*, am, punitif dan teladan *tertakluk kepada taksiran* oleh Pendaftar. (Emphasis added.)

I

[22] The pleading point ought to have been taken during the trial which ran for 36 days. It was not.

[23] Instead, the defendants were adjudged to pay the plaintiffs special damages to be assessed premised upon the pleadings filed and in particular, para 9 of the statement of claim as highlighted by the defendants and reproduced above.

[24] The defendants appealed to the Court of Appeal against the said judgment. They succeeded and the said judgment was set aside. The grounds of judgment of the Court of Appeal is published as *Golden Star & Ors v Ling Peek Hoe & Anor and other appeals* [2015] 6 MLJ 874; [2015] 1 LNS 940.

[25] The plaintiffs then appealed to the Federal Court. They succeeded and on 20 June 2017 the said judgment of the LTJ was ordered to be restored. The grounds of judgment of the Federal Court is published as *Ling Peek Hoe & Anor v Ding Siew Ching and another appeal* [2017] 5 MLJ 385; [2017] 7 CLJ 641.

[26] The defendants applied to review the Federal Court judgment. They failed. Undeterred they applied a second time and yet a third time with both the second and third review applications heard together and dismissed. Not only was the second and third review applications unanimously dismissed by the Federal Court, the defendants and their lead counsel were found guilty of contumacious and disrespectful conduct in proceeding with the filing of the second and third review applications and were each found guilty of contempt of court for disobeying the court order, see *Golden Star & Ors v Ling Peek Hoe & Ors* [2021] 2 MLJ 259; [2021] 3 CLJ 443 (FC).

[27] In the trial leading to the said judgment and the appeals against the said judgment before the Court of Appeal and the Federal Court, the pleading point was not taken. It is, therefore, now too late for the defendants to take up the pleading point, it being res judicata, see *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189; [1995] 3 CLJ 783 where Peh Swee Ching FCJ speaking for the Supreme Court said:

> What is res judicata? It simply means a matter adjudged, and its significance lies in its effect of creating an estoppel per rem judicature. When a matter between two parties has been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the res judicata, because the judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth; *res judicata pro veritate accipitur*. The public policy of the law is that it is in the public interest that there should be finality in litigation — interest *rei publicae ut sit finis litium*. It is only just that no one ought to be vexed twice for the same cause of action — *nemo debet bis vexari pro eadem causa*. Both maxims are the rationales for the doctrine of res judicata, but the earlier maxim has the further elevated status of a question of public policy.
>
> Since a res judicata creates an estoppel *per rem judicatum*, the doctrine of res judicata is really the doctrine of estoppel *per rem judicatum*, the latter being described

sometimes in a rather archaic way as estoppel by record. Since the two doctrines are the same, it is no longer of any practical importance to say that res judicata is a rule of procedure and that an estoppel *per rem judicatum* is that of evidence. Such dichotomy is apt to give rise to confusion.

The starting point ought to be the celebrated passage by Wigram, VC, in the case of *Henderson v Henderson* [1843] 3 Hare 100 115 which is:

> *The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time.* (Emphasis added.)

[28] With the Federal Court having restored the said judgment, it is for this court to proceed with the assessment of damages, special, general, punitive and exemplary, adjudged to be payable by the defendants to the plaintiffs.

[29] Before leaving this point, lest it be asserted that there was an oversight by this court in failing to take into account that the said judgment was on liability and not on damages, in my view, the said judgment is clear on what damages were awarded for purposes of assessment. On this, I hearken to the ratio decidendi laid down by the Court of Appeal in *Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd* [1996] 2 MLJ 57; [1997] 2 CLJ 104 where Gopal Sri Ram JCA (then) said:

> If authority is needed for the proposition which has commended itself to us, it is to be found in *Government of Malaysia v Dato Chong Kok Lim* [1973] 2 MLJ 74; [1973] 1 LNS 35 which was drawn to the attention of counsel during argument and in which there appears the following passage in the judgment of Sharma J (at p 76):
>
> > In *Satyadhyan Ghosel and others v Sint Deorajin Dobi & Another* AIR 1960 SC 941, the statement of the law on the subject is given thus:
> >
> > *The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall be not adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again.* This principle of res judicata is embodied in relation to suits in s 11 of the Code of Civil Procedure; but even where s 11 does not apply, the principle of res judicata has been applied by Courts for the purpose of achieving finality in litigation.
> >
> > *The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.*

The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.

A decision given by a court at one stage on a particular matter or issue is binding on it at a later stage in the same suit or in a subsequent suit. (See *Peareth v Marriott* [1883] 22 Ch D 182, *Hook v Administrator-General of Bengal and Others* LR 48 IA 187 and *In the Matter of the Trusts of the Will of Tan Tye (Deceased) Yap Liang Neo v Tan Yew Ghee and Another* [1936] 1 MLJ 141*, 147–151). Parties cannot raise a second time in the same suit an issue that has already been determined either expressly or by necessary implication* (see *Louis Dreyfus v Aruna Chalayya* LR 58 IA 381). (Emphasis added.)

Other grounds

[30] Whilst the principle for res judicata would be sufficient to deal with the pleading point, by reason of the industry of learned counsel for the defendants in pursuing the same, for the following further reasons, I find it to be in any event, without merit.

[31] The authorities relied upon by the defendants on the pleading point can be easily distinguished in that, in none of these cases, was there a judgment for special damages to be assessed after trial despite there being no particulars of damages being pleaded.

[32] In *Ong Ah Long*, there was no separate trial for assessment of damages; in *Shen & Sons Sdn Bhd*, there was not even a prayer for special damages; in *Lau Yang Kim*, the order was only for assessment of general damages; *UDA Holdings Bhd* was a land acquisition case where the complaint was a failure to plead the breach of an alleged valuer's duty and in *MSIG Insurance*, there was no order for the assessment of special damages.

Affidavits as pleadings

[33] The underlying jurisprudence on strict adherence to the rule on pleadings is to do with procedural justice. It is to prevent surprise or ambush at trial. Its origins were at a time when oral evidence was led at trial with no advance notice given as to what evidence would be led. It is very different now. The evidence of the witnesses is in witness statements which are exchanged before the trial and this, in fact, with all due respect, better serve procedural justice as the opposite party knows exactly what is being sought. He even gets to weigh the strength of the evidence that would be led to prove the claim and prepare his case accordingly.

A **[34]** In this case, the exact amount sought by way of special damages was set out in the plaintiffs' affidavit (WS1) dated 3 February 2021 with the defendants filing their respective affidavits making replies thereto before the assessment of damages. Documents were bundled and exchanged.

B **[35]** Indeed, as pointed out by Mr Edmund Lim, learned counsel for the plaintiffs, O 34 r 2(2)(b)(ii) of the Rules of Court 2012 ('the ROC 2012') expressly provides that during a pre-trial case management, affidavits can be ordered to stand as pleadings. There is a similar provision in O 28 r 8 of the ROC 2012.

C **[36]** Whilst I had made no express order for affidavits to stand as pleadings for the assessment of damages, I had given case management directions for affidavits to be filed and exchanged for the assessment exercise. The depositions in the affidavits are declared to be true, in solemn form duly attested before a commissioner for oaths. The deponent is liable to be visited with penalties for imprisonment under the Penal Code (Revised 1997) Act 574 if he gives or fabricates false evidence, see ss 191–193. In my considered opinion, the affidavits filed and exchanged on the damages sought with the evidence marshalled to support the claim duly set out therein, are as good as pleadings.

D

E **[37]** Mr Tan Lee Keat, the learned counsel for the second to fifth defendants in the course of presenting his oral submissions on 24 November 2021 raised the complaint that the three affidavits (R44, R45 and R46) of the plaintiffs were affirmed and filed on 3 February 2021 with the assessment commencing 8 February 2021 giving the defendants only five days to study them and he asserted this is unfair and had caught the defendants by surprise. To this, Mr Edmund Lim, learned counsel for the plaintiffs, replied that it is unfair for the defendants to take this point as the defendants could have sought time to reply and the plaintiffs would not have objected. To allow the assessment to be run its course until completion and then to raise this issue in closing submissions is an afterthought and ought not to be considered by this court.

F

G

H **[38]** This court is of the view that the defendants' complaint is without merit. It is indisputable that the order of the Federal Court restoring the said judgment was made on 20 June 2017. The trial dates for the assessment of damages was fixed on 5 January 2021 to be undertaken over three days from 8 February 2021 to 10 February 2021. In fact, it ran for five days over a period of eight months on 8 February 2021, 9 February 2021, 10 March 2021, 16 March 2021 and 8 October 2021 with the extended period brought about by the COVID-19 pandemic and the attendant lockdown implemented nationwide. As from the 20 June 2017 when the Federal Court restored the said judgment until 2021 when directions were sought for the assessment of damages — a period of four years, the defendants could have sought further

I

and better particulars of the claim for special damages but they did not. With the assessment having been undertaken over eight months, the defendants had ample time to consider the evidence led, and if necessary sought for witnesses to be recalled for examination. They did not. Thus, I am of the view that the submissions by the plaintiffs that the complaint raised in closing submissions about being taken by surprise anchored upon the narrow period of five days between 3 February 2021 and 8 February 2021 is frivolous and clearly an afterthought and unmeritorious.

Instances of special damages assessed without pleadings

[39] It is, in fact, rather common for damages including that for special damages to be assessed by way of exchange affidavits without pleadings and examples that easily come to mind are an order for assessment of damages that often accompany an order for the removal of a caveat, see *MD Biomedical Engineering (M) Sdn Bhd v Goh Yong Khai* [2021] 5 MLJ 408; [2021] 6 CLJ 30 (CA), and on order for assessment of damages that accompany the setting aside of an order for injunction, see *Goo Sing Kar v Dato' Lim Ah Chap & Ors Goo Sing Kar v Dato' Lim Ah Chap & Ors* [2013] 3 MLJ 374 (CA).

[40] We now come to the assessment of damages.

THE LAW ON ASSESSMENT OF DAMAGES

[41] This court is guided by the law laid down in O 37 r 6 of the Rules of Court 2012 that:

> Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

[42] This court agrees with the submissions of the plaintiffs that this court is and ought to also take into account all the facts and circumstances which took place between date of the said judgment of 20 June 2017 down to the trial of the assessment in 2021.

[43] As there is the issue of legal charges being claimed, learned counsel for the plaintiffs submit that the provisions of O 59 r 8 of the Rules of Court 2012 which is reproduced below would be relevant:

> The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account:
>
> (a) any offer of settlement under Order 22B; including conduct before and during the proceedings;

(b) the conduct of the parties in relation to any attempt at resolving the cause of matter;

(c) the conduct of the parties in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution;

(d) ... (not relevant)

[44] And, the plaintiffs assert that the following circumstances are relevant for consideration in the assessment:

(a) the fact that there was never any offer of settlement from the defendants, whether before or after the Federal Court restored the said judgment in 2017;

(b) attempts by the plaintiffs to reach out to the defendants for settlement of the damages to avoid further protracted litigation but without any avail (see line 932 p 32 notes of evidence dated 9 February 2021 and line 653 p 27 notes of evidence dated 16 March 2021);

(c) barely one month after the Federal Court allowed the plaintiffs' appeal, the fifth defendant's wife, assisted by a lawyer in the first defendant's firm, entered private caveats on the first plaintiff's Kg Selamat land under the pretext of it being matrimonial property so as to seek to frustrate the retransfer of this piece of property in breach of the said judgment when:

(i) there was in fact no divorce proceedings between the fifth defendant and his wife. In fact, his wife even accompanied him to court earlier during the committal proceedings and for the trial of assessment of damages; and

(ii) there were no other similar caveats lodged by fifth defendant's wife on his other various properties, including their matrimonial home at Lot 36943 where they lived together for 16 years (see line 569–666, pp 24–28 notes of evidence dated 8 October 2021).

(d) the third to the fifth defendants' continuous refusal to comply with the High Court order for mandatory injunction despite being reinstated by the Federal Court in 2017 compelling the plaintiffs to initiate committal proceedings against them (see High Court order dated 13 November 2019 encl R34);

(e) the second to the fifth defendants' repeated attempts to review the Federal Court's order causing the plaintiffs to literally having no choice but to incur further legal fees in order to enforce their rights against the defendants before the assessment of damages could finally be set down for trial in 2021;

(f) it was brought to the court's attention that to compel the defendants to submit to the trial for assessment of damages with the view to bring this

action to a conclusion, committal proceedings at the Federal Court was considered and the letter of agreement dated 11 March 2019 (R41 p 179 *Jld* 1) best describes the plaintiffs' predicament at the material time:

> 3. *To answer to your query as to whether we can assure you that the matter would end at the 3rd review in the Federal Court, we regret that we are unable to make such an assurance*. In so far as the LAW is concerned, there is no limit to the number of times a party may resort to Rule 137 of the Rules of the Federal Court 1995 no matter how frivolous the reasons may be.
>
> Be that as it may, *as a drastic and final resort* to ensure that the defendants do not continue to abuse the court process, you may consider *applying to the FEDERAL COURT itself for committal proceeding against the defendants and their current solicitor for their conduct. It will be an uphill task and we do not guarantee any success in the matter*.

(g) as it turned out for the plaintiffs, the Federal Court found the defendants and their counsel guilty of contempt of court where Her Ladyship, Hasnah Mohammed Hashim FCJ held:

> [63] Despite having exhausted all the avenues to appeal their case, the respondents were recalcitrant by insisting on litigating by filing the applications for review as well as for the stay. From the time the Federal Court order was granted until the first review application was filed one year two months had lapsed followed by the filing of the second and third review applications. It is apparent to us that the respondents have unabashedly refused to comply with the High Court order affirmed and reinstated by this court. The non-compliance of a court order, and in this case an injunction, is a serious matter. Such behaviour to our mind, showcased total disregard and disrespect of the order granted by the Federal Court which tantamount to clear contempt of this court's order.
>
> [71] We are therefore, of the view that such conduct and behaviour of the respondents and HK were contumacious and disrespectful. In the circumstances of this case we are satisfied beyond reasonable doubt that the respondents and HK (Mohamed Haniff Khatri Abdulla) are guilty of contempt of court, see *Golden Star & Ors v Ling Peek Hoe & Ors* [2021] 2 MLJ 259; [2021] 3 CLJ 443 and brought to a close the long extended fight on the said judgment setting the stage for the trial for the assessment of damages.

MEASURE OF DAMAGE

[45] It is indisputable that the said judgment was restored by the Federal Court premised on findings of *misrepresentation, fraud or conspiracy to defraud* against all the defendants, see the decision of the Federal Court in *Ling Peek Hoe & Anor v Ding Siew Ching and another appeal* [2017] 5 MLJ 385 at p 396; [2017] 7 CLJ 641 at p 652 paras 34, 36 and 37.

[46] The measure of damages for fraud was established in the case of *Doyle v Olby (Ironmongers) Ltd and others* [1969] 2 All ER 119, whereby Lord Denning held:

> In fraud, the defendant has been guilty of a deliberate wrong by inducing the plaintiff to act to his detriment. The object of damages is to compensate the plaintiff for all the loss he has suffered, so far, again, as money can do it. In contract, the damages are limited to what may reasonably be supposed to have been in the contemplation of the parties. *In fraud, they are not so limited. The defendant is bound to make reparation for all the actual damage directly flowing from the fraudulent inducement. The person who has been defrauded is entitled to say: 'I would not have entered into this bargain at all but for your representation. Owing to your fraud, I have not only lost all the money I paid you, but, what is more, I have been put to a large amount of extra expense as well and suffered this or that extra damages'. All such damages can be recovered: and it does not lie in the mouth of the fraudulent person to say that they could not reasonably have been foreseen*.
>
> For instance, in this very case the plaintiff has not only lost the money which he paid for the business, which he would never have done if there had been no fraud: he put all that money in and lost it; but also he has been put to expense and loss in trying to run a business which has turned out to be a disaster for him. *He is entitled to damages for all his loss, subject, of course, to giving credit for any benefit that he has received.* There is nothing to be taken off in mitigation: for there is nothing more that he could have done to reduce his loss. He did all that he could reasonably be expected to do.

[47] The principle laid down in *Doyle v Olby* has been adopted by our courts, see *Sim Thong Realty Sdn Bhd v Teh Kim Dar @ Tee Kim* [2003] 3 MLJ 460 (CA) and *Kuan Pek Seng @ Alan Kuan v Robert Doran & Ors and other appeals* [2013] 2 MLJ 174.

[48] The plaintiffs brought to the court's attention two cases which this court finds helpful where legal fees were awarded by way of damages in cases involving fraud or deceit:

(a) *Dadourian Group International Inc and others v Simms and others* [2006] EWHC 2973 (Ch) where damages for the tort of deceit was awarded. On the claims for legal and other incidental costs and expenses incurred in: (i) defending claims in the New York action and the arbitration, as well as prosecuting the counterclaim in the arbitration and resisting the application to remove the arbitrator, Warren J held as follows:

> 760. The relevant costs have been incurred by DGI as a direct result of being embroiled in a dispute which would never have arisen if DGI had not acted in reliance on the misrepresentation. Leaving aside for the moment the costs of the application in the New York litigation to prevent an arbitration in London, all of the costs of DGI in the litigation and the arbitration were incurred in fighting claims (either as claimant or defendant) on which it was

wholly successful before the arbitrator. DGI was faced with a claim against it: it had no option but to defend it and quite properly made its counterclaim. I say quite properly because it was successful which, retrospectively, shows that DGI's case was a proper one to defend and bring. DGI had no option but to defend the claim against it since to have capitulated would have resulted in a large damages claim against it. The counterclaim was really the other side of the coin of the defence. Further, as DGI claims, the counterclaim was a reasonable attempt to recover from Charlton and would, had Charlton had any assets, have been an effective mitigation of any loss flowing from the misrepresentations. *In those circumstances, the costs, in my judgment, are in principle recoverable as damages. The same goes for the costs of the unsuccessful attempt to remove the arbitrator.*

(b) *Yap Boon Hwa v Kee Wah Soong* [2020] 1 MLJ 37 (CA), a case involving an assessment of damages for fraudulent misrepresentation perpetrated by the second plaintiff upon the defendant, the Court of Appeal held that legal fees incurred by the defendant in defending the action were reasonable and recoverable.

[49] In my view, on the facts of this case, the decision of the Federal Court in *Takako Sakao (f) v Ng Pek Yuen (f) & Anor (No 2)* [2010] 2 MLJ 181 is instructive where the Federal Court took into account the conduct of the respondents who 'set themselves upon a course to unlawfully deprive the appellant of her legitimate interest in the subject property' and considered 'this to be an appropriate case to award costs on an indemnity basis at all levels'.

[50] The authorities from Hong Kong are consistent in that a victim of fraud should be entitled to costs on an indemnity basis, see *Forever Up Holdings Ltd v Tong Yan Wa* [2019] 5 HKC 478; [2018] HKCFI 2775, *Seto Wai Leung Benny v Se-to Shuk Yee and others* [2018] HKCU 4242; [2018] HKCFI 2673, *Brassart Jacqueline Marcelle v R & P International Accounting Affairs Ltd and others* [2017] HKCU 1324, *Akai Holdings Ltd (in compulsory liquidation) v Everwin Dynasty Ltd and others* [2016] 3 HKC 307, *Non-No Fashion Wholesale Limited v Chung Kam Wing And Shu Man Lee (by original action) and others* [2001] HKCU 838 and *Pacific Electric Wire & Cable Co Ltd v Texan Management Ltd* [2013] HKEC 1623.

[51] On giving credit for any benefit received, the plaintiffs conceded that the sum of RM140,000 received by them by way of costs as well as a double claim for refresher of RM4,000 for a court attendance on 26 March 2012 should be deducted from the legal expenses they are claiming under special damages.

[52] In the circumstances, I am of the view that the claim for the legal fees and expenses on an indemnity basis by way of special damages is appropriate.

[53] With that, I now turn to deal with the various heads of damages claimed, starting with special damages and to assess the same.

SPECIAL DAMAGES

[54] Under the category of special damages, the plaintiffs claim four separate items as summarised in para [12]–[14] above. The bulk of the claim under this category is a sum of RM2,748,000 comprising legal fees ('legal charges') incurred in the legal action to recover their five pieces of property including the Kg Selamat land and the No 59 Taman Ilmu properties which were found to have been caused to have been fraudulently transferred to the third to fifth defendants by the defendants acting in concert and facilitated by the first defendant.

Legal charges

[55] Evidence led to support the amount paid and payable for the legal charges are contained in the witness statements in the form of affidavits of PWS1 (paras 9, 13 and 16–19) and PWS2 (paras 4 and 12–15). PWS1 and PWS2 are the witness statements of the second and first plaintiffs respectively.

[56] Further evidence was led through the witness statements marked as:

(a) PWS3 at para 11 on the plaintiffs still owing legal fees;

(b) PWS4 on him having to discontinue his studies and work so as to send money home to pay for the (legal) expenses incurred in this legal action; and

(c) PWS5 which were also in the form of affidavits.

[57] PWS3, PWS4 and PWS5 were the witness statements of Wong Tiang Soon (PW3) a cousin of the second plaintiff and a former employee of the first plaintiff, Ling Boon Heng (PW4) the eldest son of the first plaintiff and the brother of the second plaintiff and Tiong Sew Choo (PW5) the sister of the late wife of the plaintiff who said that her late sister was worried about not being able to pay for the tuition fees of PW4.

[58] These witnesses were all subject to cross-examination.

[59] The documentary evidence led by the plaintiffs is helpfully tabulated and are reproduced below:

(a) retainers

No	Case No	Supporting Documents	Legal Fees (RM)
1.	High Court ('HC') Suit No 22–203 of 2006	Letter of agreement on legal fees dated 21 February 2006 ('LA 21 February 2006') para 1(ii), (iii) and (v) at pp 1–2 Jld 1 Writ of summons dated 18 August 2006 at pp 4–5 Jld 1	- 120,000 (2563); - 120,000 (2564); -80,000 (No 59) 320,000
2.	HC No 22–203 of 2006	Summons in chambers dated 5 October 2006 pp 6–8 Jld 1 with cross-reference to LA 21 February 2006 para 1(iv) at pp 1–2 Jld 1	5,000
3.	HC No 22–203 of 2006	Summons in Chambers dated 9 January 2007 pp 9–10 Jld 1 with cross-reference to LA 21 February 2006 para 1(iv) at pp 1–2 Jld 1	5,000
4.	HC No 22–203 of 2006	Notice of appeal to judge in chambers dated 26 February 2008 at pp 11–12 Jld 1 with cross-reference to LA 21 February 2006 on legal fees para 1(vii) at pp 1–2 Jld 1	5,000
5.	HC No 22-45-2008	Writ of summons dated 27 February 2008 at pp 13–14 Jld 1 Another letter of agreement on legal fees dated 8 May 2008 para 1 at pp 20–21 Jld 1	50,000
6.	HC No 22–203 of 2006	Summons in chambers dated 15 November 2007 pp 15–16 Jld 1 with cross-reference to LA 21 February 2006 para 1(iv) at pp 1–2 Jld 1	5,000
7.	HC No 22-45-2008	Summons in chambers dated 29 February 2008 pp 17–19 Jld 1 with cross-reference to LA 21 February 2006 para 2 at pp 20–21 Jld 1	5,000
8.	HC No 22–203 of 2006	Summons in chambers dated 26 August 2008 pp 28–29 Jld 1 with cross-reference to LA 21 February 2006 para 1(iv) at pp 1–2 Jld 1	5,000

9.	HC No 22–203 of 2006	Summons in chambers dated 30 March 2010 pp 30–32 Jld 1 with cross-reference to LA 21 February 2006 para 1(iv) at pp 1–2 Jld 1	5,000
10.	HC No 22–203 of 2006	Summons in chambers dated 19 May 2010 pp 33–34 Jld 1 with cross-reference to LA 21 February 2006 para 1(iv) at pp 1–2 Jld 1	5,000
11.	HC No 22–203 of 2006	Summons in chambers dated 19 September 2011 pp 35–37 Jld 1 with cross-reference to LA 21 February 2006 para 1(iv) at pp 1–2 Jld 1	5,000
12.	HC No 22–203 of 2006	Summons in chambers dated 20 October 2011 p 38-41 Jld 1 with cross-reference to LA 21 February 2006 para 1(iv) at pp 1–2 Jld 1	5,000
13.	Court of Appeal ('CoA') No A-02–428–02 of 2012	Letter of agreement on legal fees dated 6 February 2012 ('LA 2012') para 2 at pp 43–44 Jld 1 Notice of appeal dated 10 February 2012 at pp 48–49 Jld 1	50,000
14.	HC No 22–203 of 2006	Summons in chambers dated 9 February 2012 pp 45–47 Jld 1 with cross-reference to LA 21 February 2006 para 1(iv) at pp 1–2 Jld 1	5,000
15.	Court of Appeal ('CoA') No A-02–2975–12 of 2012	Notice of appeal dated 3 December 2012 at pp 55–57 Jld 1 Letter of agreement on legal fees dated 19 December 2012 para 2 at pp 61–62 Jld 1	80,000
16.	HC No 22–203 of 2006	Summons in chambers dated 4 December 2012 pp 58–60 Jld 1 cross-refer with cross-reference to LA 21 February 2006 para 1(iv) at pp 1–2 Jld 1	5,000

17.	Court of Appeal ('CoA') No A-02–102–01 of 2013	Notice of appeal dated 11 December 2012 at pp 67–68 Jld 1 Letter of agreement on legal fees dated 2 January 2013 para 2 at pp 63–64 Jld 1	80,000
18.	Court of Appeal ('CoA') No A-02(1M)-1147–05 of 2013	Notice of appeal dated 30 April 2013 at pp 71–72 Jld 1 Letter of agreement on legal fees dated 2 May 2013 para 2 at pp 65–66 Jld 1	50,000
19.	CoA No A-02-2975-12 of 2012	Notice of motion dated 18 April 2013 at pp 73–77 Jld 1 cross-refer letter of agreement para 2 at pp 61–62 Jld 1	10,000
20.	HC No 22–203 of 2006	Notice of application (ex parte) dated 4 July 2013 at pp 78–79 Jld 1 with cross-reference to LA 21 February 2006 para 1(vii) at pp 1–2 Jld 1	5,000
21.	HC No 22–203 of 2006	Notice of application (ex parte) dated 11 July 2013 at pp 80–81 Jld 1 with cross-reference to LA 21 February 2006 para 1(vii) at pp 1–2 Jld 1	5,000
22.	HC No 22–203 of 2006	Notice of application (ex parte) dated 23 July 2013 at pp 82–84 Jld 1 with cross-reference to LA 21 February 2006 para 1(vii) at pp 1–2 Jld 1	5,000
23.	CoA No A-02(IM)-1147–05 of 2013	Notice of motion dated 17 September 2013 at pp 85–86 Jld 1 cross-refer letter of agreement on legal fees at p 63–64 Jld 1	10,000
24.	CoA No A-02–2975–12 of 2012	Notice of motion dated 13 August 2013 at pp 87–89 Jld 1 cross-refer letter of agreement at pp 61–62 Jld 1	10,000

25.	HC No 22–203 of 2006	Notice of motion dated 23 August 2013 at pp 90–91 Jld 1 with cross-reference to LA 21 February 2006 para 1(vii) at pp 1–2 Jld 1	5,000
26.	HC No 22–203 of 2006	Notice of motion dated 23 August 2013 at pp 90–91 Jld 1 with cross-reference to LA 21 February 2006 para 1(vii) at pp 1–2 Jld 1	5,000
27.	Federal Court ('FC') No 08–273–05 of 2014	Notice of motion dated 28 May 2014 at pp 94–95 Jld 1 cross-refer letter of agreement on legal fees p 96-97 Jld 1	80,000
28.	FC No 08–156–04 of 2015	Notice of motion dated 10 April 2015 at pp 114–116 Jld 1 cross-refer letter of agreement on legal fees p 109 Jld 1	80,000
29.	FC No 08–155–04 of 2015	Notice of motion dated 10 April 2015 at pp 112–113 Jld 1 cross-refer letter of agreement on legal fees p 110 Jld 1	80,000
30.	FC No 08–156–04 of 2015	Notice of motion dated 10 April 2015 at pp 112–113 Jld 1 cross-refer letter of agreement on legal fees p 111 Jld 1	50,000
31.	FC No A-02–2975–12 of 2012	Notice of appeal dated 15 April 2016 at pp 120–122 Jld 1 cross-refer letter of agreement on legal fees p 117 Jld 1	150,000
32.	FC No A-02(IM)-1147–05 of 2013	Notice of appeal dated 15 April 2016 at pp 120–122 Jld 1 cross-refer letter of agreement on legal fees p 118 Jld 1	100,000
33.	FC No A-02–102–01 of 2013	Notice of appeal dated 15 April 2016 at pp 123–125 Jld 1 cross-refer letter of agreement on legal fees p 119 Jld 1	150,000
34.	FC No 02(f)-24–04 of 2016(A)	Notice of motion dated 13 July 2016 at pp 126–128 Jld 1 cross-refer letter of agreement on legal fees para 2.3 p 137 Jld 1	10,000

35.	FC No 02(f)-24–04 of 2016(A)	Notice of motion dated 28 February 2018 at pp 133–135 Jld 1 cross-refer letter of agreement on legal fees para 2.1 p 137 Jld 1	100,000
36.	HC No 22–203 of 2006	Notice of motion dated 16 April 2018 at pp 138–142 Jld 1 cross-refer letter of agreement on legal fees para 2.1 p 136 Jld 1	50,000
37.	HC No 22–203 of 2006	Notice of motion dated 31 July 2018 at pp 143–145 Jld 1 with cross-reference to LA 21 February 2006 para 1(vii) at pp 1–2 Jld 1	5,000
38.	FC No 08(R)-8–10 of 2018(W)	Notice of motion dated 23 October 2018 at p 146–153 Jld 1 cross-refer letter of agreement on legal fees para 3.1 at pp 159 Jld 1	100,000
39.	HC No 22–203 of 2006	Notice of motion dated 25 October 2018 at pp 154–158 Jld 1 with cross-reference to LA 21 February 2006 para 1(vii) at pp 1–2 Jld 1	5,000
40.	FC No 08(RS)-15–11 of 2018(W)	Notice of motion dated 8 November 2018 at pp 160–167 Jld 1 cross-refer letter of agreement on legal fees para 3.1 at p 174 Jld 1	100,000
41.	FC No 08(R)-8–10 of 2018(W)	Notice of motion dated 19 November 2018 at pp 168–173 Jld 1 cross-refer letter of agreement on legal fees para 3.3 at p 159 Jld 1	10,000
42.	CoA No A-02(IM)-2555–12 of 2018	Notice of appeal dated 7 December 2018 at pp 176–177 Jld 1 cross-refer letter of agreement on legal fees para 3.1 at p 175 Jld 1	50,000
43.	FC No 08(i)-92–03 of 2019(A)	Notice of motion dated 19 March 2019 at pp 181–182 Jld 1 cross-refer letter of agreement on legal fees para 3.1 at p 178 Jld 1	80,000

44.	FC No 02(f)-24–04 of 2016(A)	Notice of motion (ex parte) dated 8 May 2019 at pp 183-185 Jld 1 cross-refer letter of agreement on legal fees para 5.1 at p 179–180 Jld 1	300,000
45.	FC No A-02(IM)-2555–12 of 2018	Notice of appeal dated 31 October 2019 at pp 205-207 Jld 1 cross-refer letter of agreement on legal fees para 3.1 at p 204 Jld 1	100,000
		TOTAL	2,345,000 (there was an admitted error in the calculation of total sum in p 8 PWS1 by an additional RM100,000 leading to (RM2.425m)

[60] Besides the retainers in the table above, further legal fees in the form of refreshers were charged.

[61] A retainer means the fees chargeable when a law firm is retained to undertake a particular piece of work and a refresher is the fee chargeable when the advocate and solicitor of the law firm retained has to refresh his memory so as to prepare for the legal assignment normally a hearing in court.

[62] The refreshers that the plaintiffs were charged are tabulated with the contents obtained from the documentary evidence led. This table prepared by learned counsel for the plaintiffs is set out hereunder:

No	Case No	Supporting Documents	Legal fee (RM)
1.	HC No 22–203 of 2006 attended by Edmund Lim on 10 January 2007 before Pn Sharifah the learned Senior Assistant Registrar ('SAR')	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000

2.	HC No 22–203 of 2006 attended by Edmund Lim on 19 February 2008 before Pn Suhaily SAR	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
3.	HC No 22–203 of 2006 attended by Edmund Lim on 24 March 2008 before YA Wan Afrah bt Wan Ibrahim	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
4.	HC No 22–203 of 2006 attended by Edmund Lim on 14 July 2008 before YA VT Singham	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
5.	HC No 22–203 of 2006 attended by Edmund Lim on 10 December 2009 before YA Wan Afrah bt Wan Ibrahim	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
6.	HC No 22–203 of 2006 attended by Edmund Lim on 10 December 2009 before YA Zainal Adzam bin Abd Ghani	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
7.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang on 1 February 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
8.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 2 February 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000

9.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 15 February 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
10.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 16 February 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
11.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 22 February 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
12.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang on 27 February 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
13.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 16 March 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
14.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 19 March 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000

15.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 23 March 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
16.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 26 March 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
17.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 26 March 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
18.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 27 March 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
19.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 27 March 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
20.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 29 March 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000

21.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 30 March 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
22.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 18 April 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
23.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 10 May 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
24.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 11 May 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
25.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 15 May 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
26.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 24 May 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000

27.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 13 June 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
28.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 14 June 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
29.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 20 June 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
30.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 21 June 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
31.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 22 June 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
32.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang on 27 June 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000

33.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang on 28 June 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
34.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 19 July 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
35.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 20 July 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
36.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 23 July 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
37.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 25 July 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
38.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 27 July 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000

39.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 8 August 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
40.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 9 August 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
41.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 10 August 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
42.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 18 September 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
43.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 19 September 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
44.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chew King, Hong Chong Hang and Edmund Lim on 28 September 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	9,000

45.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 3 October 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
46.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 4 October 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
47.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 5 October 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
48.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 8 October 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
49.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 11 October 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
50.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 22 November 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000

51.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 28 November 2012 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
52.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 4 February 2013 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
53.	COA No A-02–2975–12 of 2012 attended by Hong Chong Hang and Edmund Lim on 8 May 2013 before YA Abdul Wahab bin Patail, YA Mohamad Ariff bin Md Yusof, YATengku Maimun bt Tuan Mat Md Yusof	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 61–62 Jld 1	4,000
54.	COA No A-02–2975–12 of 2012 attended by Edmund Lim on 28 May 2013 before Pn Sazlina TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 61–62 Jld 1	2,000
55.	COA No A-02–428–02 of 2012 attended by Edmund Lim on 11 June 2013 before Tn Saiful Bahari TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 43-44 Jld 1	2,000
56.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 8 July 2013 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000

57.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 10 July 2013 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000
58.	HC No 22–203 of 2006 &22–45–08 attended by Edmund Lim on 20 August 2013 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
59.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 26 August 2013 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
60.	COA No A-02(IM)-1147– 05 of 2013 attended by Hong Chong Hang and Edmund Lim on 17 September 2013 before YA Mohamad Apandi bin Ali, YA Linton Albert, YA Lim Yee Lan	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para (ii) at p 61-62 Jld 1	4,000
61.	COA No A-02(IM)-1147– 05 of 2013 attended by Edmund Lim on 20 September 2013 before Pn Nurul Izwan bt Ahmad Zubir TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para (ii) at pp 63–64 Jld 1	2,000
62.	COA No A-02–2975–12 of 2012 attended by Edmund Lim on 24 September 2013 before Pn Fadzilatul Isma bt Ahmad Refugah TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 61–62 Jld 1	2,000

63.	COA No A-02(IM)-1147– 05 of 2013 attended by Edmund Lim on 2 October 2013 before YAA Md Raus bin Sharif	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para (ii) at pp 63–64 Jld 1	2,000
64.	COA No A-02(IM)-1147– 05 of 2013 attended by Hong Chong Hang and Edmund Lim on 14 October 2013 before YA Alizatul Khair bt Osman, YA Ananthan Kasinather, YA Varghese George Varughese	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para (ii) at pp 63–64 Jld 1	4,000
65.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 21 October 2013 before YA Dr Hj Hassan bin Ab Rahman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
66.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 25 October 2013 before Pn Najwa Che Mat TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
67.	COA No A-02–2975–12 of 2012 attended by Hong Chong Hang and Edmund Lim on 19 November 2013 before YA Mohd Hishamudin bin Mohd Yunus, YA Lim Yee Lan, YA Mohd Zawawi bin Salleh	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 61–62 Jld 1	4,000

68.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 10 January 2014 before Pn Najwa Che Mat TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
69.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 23 January 2014 before Pn Najwa Che Mat TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
70.	COA No A-02–428–02 of 2012 attended by Edmund Lim on 27 January 2014 before YAA Md Raus bin Sharif	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 43 Jld 1	2,000
71.	COA No A-02–2975–12 of 2012, A-02–102–01 of 2013 and A-02(IM)-1147–05 of 2013 attended by Hong Chong Hang and Edmund Lim on 17 February 2013 before YA Mohd Hishamudin bin Mohd Yunus, YA Lim Yee Lan, YA Aziah bt Ali	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 61–62, 63–64, 65–66 Jld 1	4,000
72.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 3 March 2014 before YA Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	4,000

73.	COA No A-02–428–02 of 2012 attended by Edmund Lim on 29 April 2014 before YA Tengku Maimun bt Tuan Mat, YA Aziah bt Ali, YA Lim Yee Lan	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 43 Jld 1	2,000
74.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 23 June 2014 before Pn Siti Hafiza bt Jaafar/Tn Aznin TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
75.	COA No A-02–2975–12 of 2012, A-02-102–01 of 2013 and A-02(IM)-1147–05 of 2013 attended by Edmund Lim on 2 July 2014 before Pn Emelia Kaswati bt Mohamad Khalid TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 61–62, 63–64, 65–66 Jld 1	2,000
76.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 7 July 2014 before Pn Siti Hafiza bt Jaafar	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
77.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 7 July 2014 before YA Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
78.	FC No 08(f)-273-05 of 2014 (A) attended by Edmund Lim on 9 September 2014 before Pn Jalidah bt Hamid TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 96–97 Jld 1	2,000

79.	COA No A-02–2975–12 of 2012, A-02–102–01 of 2013 and A-02(IM)-1147–05 of 2013 attended by Hong Chong Hang and Edmund Lim on 23 September 2014 before YA Lim Yee Lan, YA Abang Iskandar bin Abang Hashim, YA Vernon Ong Lam Kiat	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 61–62, 63–64, 65–66 Jld 1	4,000
80.	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 25 September 2014 before YA Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
81.	FC No 08–273– 05 of 2014 attended by Edmund Lim on 5 November 2014 before YAA Zulkefli bin Makimuddin, YAA Richard Malanjum, YA Jeffrey Tan Kok Hwa YA Azahar bin Mohamed, YA Abu Samah bin Nordin	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 96–97 Jld 1	2,000
82.	COA No A-02–2975–12 of 2012, A-02–102–01 of 2013 and A-02(IM)-1147–05 of 2013 attended by Hong Chong Hang and 23 September 2014 before YA Lim Yee Lan, YA Abang Iskandar bin Abang Hashim, YA Vernon Ong Lam Kiat Edmund Lim on	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 61–62, 63–64, 65–66 Jld 1	4,000

83.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 26 November 2014 before YA Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
84.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 13 January 2015 before YA Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
85.	COA No A-02–2975–12 of 2012, A-02–102–01 of 2013 and A-02(IM)-1147–05 of 2013 attended by Hong Chong Hang and Edmund Lim on 13 March 2015 before YA Lim Yee Lan, YA Abang Iskandar bin Abang Hashim, YA Vernon Ong Lam Kiat	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 61–62, 63–64, 65–66 Jld 1	4,000
86.	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 23 March 2015 before YA Che Mohd Ruzima bin Ghazali	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
87.	FC No A-08–155–04 of 2015 and A-08–154–04 of 2015 attended by Edmund Lim on 7 October 2015 before Pn Hasbi bt Hassan TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 109 and 111 Jld 1	2,000
88.	FC No A-08–155–04 of 2015 and A-08–154–04 of 2015 attended by Hong Chong Hang and Edmund Lim on 12 January 2016 before Pn Nor Aziati bt Jaafar TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 109 and 111 Jld 1	4,000

89.	FC No A-08–155–04 of 2015 and A-08–154–04 of 2015 attended by Wong Chong Wah, Wong Chun Keat, Hong Chong Hang and Edmund Lim on 28 March 2016 before YAA Arifin bin Zakaria, YA David Wong Dak Wah YA Abu Samah bin Nordin	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 109 and 111 Jld 1	4,000
90.	FC No A-08–155–04 of 2015 and A-08–154–04 of 2015 attended by Hong Chong Hang and Edmund Lim on 3 June 2016 before Pn Nor Kamilah bt Aziz TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 109 and 111 Jld 1	4,000
91.	FC No 02(f)-23–04 of 2016 and 02(f)-24–04 of 2016 attended by Edmund Lim on 13 June 2016 before Pn Nurul Mardiah bt Mohammad Redza TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 117–118 Jld 1	2,000
92.	FC No 02(f)-24–04 of 2016(A) and 02(f)-23–04 of 2016 attended by Edmund Lim on 13 June 2016 before Pn Nurul Mardiah bt Mohammad Redza TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 117–118 Jld 1	2,000
93.	FC No 02(f)-24–04 of 2016(A) and 02(f)-23–04 of 2016 attended by Hong Chong Hang and Edmund Lim on 14 July 2016 before Pn Nurul Mardiah bt Mohammad Redza TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 117–118 Jld 1	4,000

94.	FC No 02(f)-24–04 of 2016(A) & 02(f)-23–04 of 2016 attended by Wong Chun Keat, Hong Chong Hang and Edmund Lim on 10 August 2016 before YAA Raus Sharif, YAA Richard Malanjum, YA Jeffrey Tan Kok Hwa, YA Aziah bt Ali, YA Suriyadi bin Hamlim Omar	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 117–118 Jld 1	4,000
95.	FC No 02(f)-24–04 of 2016(A) and 02(f)-23–04 of 2015(A) attended by Wong Chong Wah, Wong Chun Keat, Hong Chong Hang and Edmund Lim on 23 November 2016 before YAA Raus Sharif, YAA Richard Malanjum, YA Abu Samah bin Nordin, YA Ramly bin Hj Ali, YA Zaharah bt Ibrahim	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 117–118 Jld 1	4,000
96.	FC No 02(f)-24–04 of 2016(A) and 02(f)-23–04 of 2015(A) attended by Wong Chong Wah, Wong Chun Keat, Hong Chong Hang & Edmund Lim on 20 June 2017 before YAA Raus Sharif, YAA Richard Malanjum, YA Abu Samah bin Nordin, YA Ramly bin Hj Ali, YA Zaharah bt Ibrahim	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 117–118 Jld 1	4,000

97.	FC No 02(f)-24–04 of 2016(A) and 02(f)-23–04 of 2015(A) attended by Hong Chong Hang and Edmund Lim on 8 August 2017 before Pn Nor Kamilah bt Aziz TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 117–118 Jld 1	4,000
98.	FC No 02(f)-24–04 of 2016(A) and 02(f)-23–04 of 2015(A) attended by Hong Chong Hang & Edmund Lim on 28 September 2017 before Pn Nor Kamilah bt Aziz TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 117–118 Jld 1	4,000
99.	FC No 02(f)-24–04 of 2016(A) and 02(f)-23–04 of 2015(A) attended by Edmund Lim on 17 April 2018 before Pn Shahrin TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 137 Jld 1	2,000
100	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 10 July 2018 before Pn Noor Azreen Liana SAR	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para pp 136 Jld 1	2,000
101	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 08 August 2018 before Pn Noor Azreen Liana SAR	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	2,000

102	FC No 02(f)-24–04 of 2016(A) attended by Wong Chong Wah, Goh Lee Ding, Hong Chong Hang and Edmund Lim on 15 August 2018 before YAA Ahmad bin Haji Maarop, YAA David Wong Dak Wah, YA Azahar bin Mohamed, YA Aziah bt Ali, YA Alizatul Khair bt Osman	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2.2 at p 137 Jld 1	4,000
103	FC No 02(f)-24–04 of 2016(A) attended by Edmund Lim on 6 September 2018 before Pn Sabreena bt Bakar @ Bahari	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2.2 at p 137 Jld 1	2,000
104	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang on 25 September 2018 before Pn Noor Azreen Liana	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	2,000
105	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 26 October 2018 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	2,000
106	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 26 November 2018 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	2,000
107	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 6 November 2018 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	2,000

108	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 15 January 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	2,000
109	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 11 February 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	2,000
110	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 25 February 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	2,000
111	COA No A-02(IM)-2555– 12 of 2018 attended by Hong Chong Hang and Edmund Lim on 7 March 2019 before YA Zaleha bt Yusof, YA Hanipah bt Farikullah, YA Kamaludin bin Md Said	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 175 Jld 1	4,000
112	FC No 08(R)-8–10 of 2018(W) and 08(RS)-15–11 of 2018(W) attended by Wong Chong Wah, Wong Chun Keat, Goh Lee Ding, Hong Chong Hang and Edmund Lim on 14 May 2019 before YAA Tengku Maimun bt Tuan Mat, YA Mohd Zawawi bin Salleh, YA Idrus bin Harun, YA Nallini Pathmanathan, YA Badariah bt Sahamid	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 3.2 at pp 159 & 174 Jld 1	4,000

113	FC No 08(R)-8–10 of 2018(W) and 08(RS)-15–11 of 2018(W) attended by Wong Chong Wah, Goh Lee Ding, Hong Chong Hang and Edmund Lim on 27 May 2019 before YA Rohana bt Yusuf, YA Mohd Zawawi bin Salleh, YA Idrus bin Harun, YA Nallini Pathmanathan, YA Badariah bt Sahamid	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 3.2 at pp 159 & 174 Jld 1	4,000
114	FC No 02(f)-24–04 of 2016(A) attended by Hong Chong Hang and Edmund Lim on 27 May 2019 before YA Rohana bt Yusuf, YA Mohd Zawawi bin Salleh, YA Idrus bin Harun, YA Nallini Pathmanathan, YA Badariah bt Sahamid	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2.2 at pp 179–180 Jld 1	4,000
115	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 18 June 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	2,000
116	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 9 July 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	4,000
117	FC No 02(f)-24–04 of 2016(A) attended by Edmund Lim on 12 July 2019 before Pn Norhafizah bt Zainal Abidin TP	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2.2 at pp 179–180 Jld 1	2,000

118	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 1 August 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	4,000
119	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 26 August 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	4,000
120	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 11 September 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	4,000
121	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 1 October 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	4,000
122	FC No 08(i)-92–03 of 2019(A) attended by Hong Chong Hang and Edmund Lim on 29 October 2019 before YAA Tengku Maimun bt Tuan Mah, YA Rohana bt Yusuf, YA Mohd Zawawi bin Salleh	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 178 Jld 1	4,000
123	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 13 November 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	4,000

124	HC No 22–203 of 2006 and 22–45–08 attended by Hong Chong Hang and Edmund Lim on 5 December 2019 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	4,000
125	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 21 January 2020 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement pp 136 Jld 1	2,000
126	FC No 02(f)-24–04 of 2016(A) attended by Hong Chong Hang and Edmund Lim on 14 July 2020 before YA Abdul Rahman bin Sebli, YA Zabariah bt Mohd Yusof, YA Hasnah bt Mohd Hashim	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement ppp 179–180 Jld 1	4,000
127	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 23 July 2020 before Pn Noor Hafiza bt Ishak SAR	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
128	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 2 September 2020 before YA Radzi bin Harun	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
129	HC No 22–203 of 2006 and 22–45–08 attended by Edmund Lim on 26 October 2020 before YA Su Tiang Joo	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000

130	HC No 22–203 of 2006 and 22–45–08 attended by Koay Jing Qian on 5 January 2021 before YA Su Tiang Joo	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement para 2(ii) at pp 1–2 Jld 1	2,000
131	FC No 02(f)-24-04 of 2016(A) attended by Hong Chong Hang and Edmund Lim on 4 January 2021 before YA Abdul Rahman bin Sebli, YA Zabariah bt Mohd Yusof, YA Hasnah bt Mohd Hashim	M/s Hong Chew King & Co court attendance list dated 2 November 2020 at pp 208–216 Jld 1 cross-refer letter of agreement ppp 179–180 Jld 1	4,000
		TOTAL	403,000 (with there being an admitted error in the addition said to be RM399,000 in PWS1 p 20)

[63] The defendants did not dispute any of the court attendances particularised in the above list during the entire action and rightly so, as the court attendances in the table above, are part of public records which are easily verifiable. More so, when the dates, suit numbers and even the coram for each of the attendances were clearly particularised.

Excessive and unforeseeable legal charges

[64] Besides, the pleading point which had been dealt with earlier, the other challenge by the defendants was that the quantum of these legal charges were excessive and unforeseeable and there is no evidence that the same have (all) been paid.

[65] This challenge to my mind is without merit. Such is the perils of litigation. When the plaintiffs initiated the suit on 18 August 2006, they submit to due process which allows a party aggrieved by any decision at first instance to appeal, commonly referred to as — one strike two appeals. The

parties took their rights of appeal seriously as can be seen from the numerous appeals filed and, in fact, they initiated and pursued three review applications in the Federal Court.

[66] In *Yap Soo Ping & Anor v Kee Wah Soong* [2018] MLJU 1449; [2018] 1 LNS 1020, Her Ladyship, Noorin Badaruddin J held, inter alia, as follows:

> [38] This court is also satisfied that apart from having to keep and maintain the company after the shares were transferred to him, the defendant had to engage lawyers to defend him. Obviously, he has to have meetings and travel to attend such meetings to prepare for his case. *This court accepts the defendant's argument that none of that would have happened and none of the expenses would have incurred by him if not for the fraudulent misrepresentation committed by the second plaintiff*. There is no necessity to require the defendant to produce documents as the defendant is not travelling officially.
>
> [39] ... *It is obvious that having to defend the suit, to pursue the counterclaim, to prove the fraudulent misrepresentation of the second plaintiff and in bringing witnesses for the trial, the defendant had incurred legal fees and expenses. Therefore, it is of the considered view that such expenses are reasonable and recoverable.*

[67] The legal charges were premised on agreements entered on various dates with the main one on 21 February 2006 (R41 pp 1–3) where the fee structure was premised upon a fixed retainer for the recovery of each of the five pieces of properties and refreshers for court attendances with a different rate to apply for a junior and a senior counsel.

[68] This court is of the view that having the benefit of hindsight to mount a challenge on excessive and unforeseeable legal charges after 15 years of litigation when the defendants have been involved in the same including the appeals and three review applications at the Federal Court is wholly without merit. By the same token, if they have prescience, the defendants could have saved all the parties including themselves the costs and the huge amount time from undertaking the transactions which were found by the High Court after a trial over 36 days to be fraudulent, null and void. They could also have spared themselves the appeal to the Court of Appeal and for good measure, not resist the plaintiffs' appeal to Federal Court. Added to that, they could also not have applied three times to review Federal Court decision where they were found guilty of contempt of court before coming back to the High Court and expending another five days in trial for the assessment of damages before closing submissions.

[69] Out of the total sum of RM2,748,000 which comprise retainers and refreshers, the plaintiffs concede that a sum of RM140,000 being the costs

received by them from various orders, plus a sum of RM4,000 where there was duplicity in the charging of a refresher for the court attendance on 26 March 2012, ought to be deducted.

[70] Even if this concession was not given the court would have made the deductions, see *Abdul Razak bin Datuk Abu Samah v Shah Alam Properties Sdn Bhd and another appeal* [1999] 2 MLJ 500 (CA) and *Sonic Finance Inc & Anor v Halim bin Mohammad & Ors* [2019] MLJU 1887 where His Lordship, Wong Kian Kheong after finding that the plaintiff had committed the tort of abuse of court process against the first defendant ordered assessment of damages against the plaintiff and said:

> [34] Cik Marina Nasution, the first defendant's learned counsel, has contended that the plaintiffs are liable to pay for all of the first defendant's legal fees and disbursements incurred for the three Actions. *I accept this submission with a qualification — the first defendant has been previously awarded costs against the plaintiffs (costs) and the costs can be recovered by the first defendant from the plaintiffs. Accordingly, the first defendant is entitled to claim for all legal fees and disbursements incurred in the 3 Actions less the costs (deduction)* — please see Ranjeet Singh Sidhu, at [64(b)(i)]. *If the deduction is not given in this assessment, this will enrich the first defendant unjustly because the first defendant will have a 'double recovery' in respect of the costs (by way of the previous order granting costs and through this assessment).*

[71] This meant that after deducting RM144,000 the total amount claimed under legal charges is RM2,604,000.

Whether legal fees incurred

[72] The defendants submitted that the plaintiffs must prove that expenditure of the legal fees was incurred and paid before they can be awarded the damages claimed.

[73] Reliance was placed by the defendants on the following High Court authorities:

(a) *Minty Holdings Sdn Bhd v JB Properties Sdn Bhd (SK Brothers Realty, third party)* [1998] 7 MLJ 182; [1998] 1 LNS 214 where Kamalanathan Ratnam J held that:

> This claim has been quantified and ascertained as amounting to RM41,801.90. I have read the judgment of my learned sister Zaleha Zahari J dated 16 February 96. Having allowed the appeal from the learned SAR she allowed summary judgment of the plaintiff's claim and ordered that general damages ought to be assessed with interest at 8%.
>
> There is a clear distinction between general and special damages. As I said in my book *Nathan on Negligence* (1998 Ed) at p 342:

Special damages belong to that category of damages that can be calculated into dollars and cents at the date of the trial.

In *RJ McGuinness v Ahmad Zaini* [1980] 2 MLJ 304 the court held that items of special damages must be specifically pleaded and if omitted, then the plaintiff must amend to include the items; otherwise no award would be made. *In this case since the legal fees were quantifiable the order of the learned judge should have included an order for special damages too.* Since the order related only to general damages, the plaintiff had no right to make a claim for the ascertained legal fees which are in fact special damages.

In any case since I have already held that the plaintiff has shown no nexus between the filing of the caveat and the delay in settlement by the purchaser, this claim for legal fees too must perforce be rejected.

(b) *Khairul Sham bin Ahmad & Anor v Yesudass a/l Michaelsamy* [2005] 2 MLJ 679 (TAB 9, DBOA) where Faiza Tamby Chik J held that:

I think special damages means 'out of pocket expenses' which consists of money incurred or paid by the plaintiff, which amounts to a 'loss' to the plaintiff.

... that it is a universal rule that the plaintiff cannot recover more than he has lost.

(c) *Lau Yang Kim v Rescom Australia Sdn Bhd & Anor* [2020] MLJU 105; [2020] 4 CLJ 130 (TAB 11, DBOA) where Amarjeet Singh Serjit Singh JC held that:

[26] *In my view, legal fees fall within the meaning of special damages.* I reached this conclusion after applying the test stated in *Ong Ah Long*. I find that legal fees are ascertained expenses and therefore particularity is necessary to warn the defendant of what is being claimed or the claims that he will be confronted with at the trial.

... [27] However, in the present case the legal fees could not be pleaded and proved at the trial because the legal fees have yet to crystallise. *To be entitled to an award of special damages the items constituting special damages must have been expended before the trial begins.* In the present case, the dates of the 12 invoices that make up the legal fees ranged from 15 June 2015 until 13 August 2018 and the payment in respect of the twelfth invoice was only made on 15 October 2018 after the trial of this action was concluded. Therefore, the legal fees of a concluded action cannot be claimed in the same action as special damages.

(d) *Sitti Rajumah & Anor v Mohd Rafiuddin bin Elmin* [1996] MLJU 86; [1996] 4 CLJ 274 where Ian HC Chin J held that legal fees are not claimable because the plaintiff is not entitled to claim all costs incurred unless an order for costs on indemnity basis was awarded and His Lordship said:

... Apart from it not being pleaded which prevents it from being raised, it also cannot constitute damages be it special or general as to be recoverable as such item is governed by the rules of the court governing the award of costs and to

award legal fees as damages would make nonsense of the said rules since to allow the item as damage may result in a litigant getting costs through another view though the court may not exercise its discretion to award costs to a successful litigant (*McGregor on Damages* (15 Ed) para 662). *It must also be borne in mind that a litigant, unless cost was awarded to him on an indemnity basis*, cannot recoup in full what *he has to pay* his own lawyers but only the costs taxed on a party to party basis. For the respondent to claim from the appellants whatever legal fees he had paid to his lawyer would mean claiming for costs on an indemnity basis which matter should properly come under the claim for costs of the action which the respondent had asked for. (Emphasis added.)

(e) *Alex Ting Kuang Kuo @ Ting Kuang Kuo v Credit Corp (M) Sdn Bhd* [2012] MLJU 1070 where Hamid Sultan J (then) held that:

> [10] As a general rule, court is obliged to order party to party costs on a standard basis and is given the discretion to order the same on indemnity basis (see O 59 r 16(2) of the CR 2012). A party to party costs on indemnity basis may be ordered where there has been scandalous conduct and is meant to be punitive in nature (see *EMI Records v Wallace* [1982] 2 All ER 980). Order 59 r 16(4) of the RC 2012 sets out the manner costs on indemnity basis should be assessed.
>
> ... [11] Solicitor-client costs, in essence, are based on indemnity basis. The solicitor-client costs are not based on what costs or fees the solicitor has agreed with the client. *If [a] solicitor has agreed with the client a certain fees (actual costs), they are contractual* and have nothing to do with taxation on solicitor-client basis. Taxing registrar must note this distinction. (Emphasis added.)

[74] Learned counsel for the plaintiffs pointed out that in *Yii Ping Hiong and Anor v Tseng Choon Chin @ Tay Bak Hui and Others* [2009] MLJU 683; [2009] 1 LNS 756, Linton Albert J upheld the award of damages awarded for the legal fees incurred by the respondents in their litigation and in particular, in resisting execution proceedings brought by the appellants to maintain and prevent the removal of the private caveat lodged by the appellants over their property and His Lordship construed the case of *Sitti Rajumah* to have held that if costs is awarded to a party on an indemnity basis, the party will be so entitled to recoup in full what he *has to pay* his own lawyers and I would add, even though not as yet paid. (Emphasis added.)

[75] See also *Lim Tee Hin v Ledchumanan a/l Nagappan* [2004] 7 MLJ 212; [2004] 3 CLJ 285 where Low Hop Bing J (later JCA) upheld the learned registrar's award of legal fees incurred by the plaintiff when assessing damages against the defendant for lodging a wrongful caveat.

[76] In *Tan Thiam Hock v Corrugated Offset Packaging (M) Sdn Bhd &*

Anor [2011] 1 LNS 592 Lau Bee Lan J (now JCA) found the private caveat lodged by the plaintiff to be unlawful and in addition to an award of RM40,000 as costs, Her Ladyship allowed, inter alia, costs to the first defendant for the removal of the private caveat to be taxed on a solicitor client basis.

[77] In *Sigma Glove Industries Sdn Bhd & Ors v Ong Chin Kok & Anor* [2019] MLJU 1045; [2019] 1 LNS 1370 Lim Chong Fong J allowed the second defendant's application to set aside an Anton Pillar order. In addition to an award of RM50,000 as costs, the court ordered, inter alia, that the plaintiffs pay the second defendant damages to be assessed. Upon assessment, His Lordship Lim Chong Fong J allowed legal fees and disbursements in favour of the second defendant. The relevant portions of His Lordship's judgment is re-produced below:

> [33] The cases cited by the parties mostly dealt with the legal fees and disbursements relating to the inquiry of damages which is akin to the assessment itself. Notwithstanding that there is no case authority in point tendered either by the second defendant or the plaintiffs, *I am nonetheless of the view that the legal fees and disbursements expended by the second defendant in instructing solicitors, obtaining advise and attending to the plaintiffs solicitors and the supervising solicitors are claimable in principle because there is undoubtedly direct causal connection between the enforcement of the APO and the second defendant having to obtain legal services to respond to it on that day.* This is in line with my opinion and the principle of restitution in integrum as discussed in *Solid Gold Publishers Sdn Bhd v Chan Wee Ho & Ors*.

[78] Based on the authorities above, an order for damages to be assessed is wider than an order for costs. Clearly, the courts have the discretion to allow legal fees incurred by an aggrieved party, in addition to the costs awarded.

[79] Recently, the Court of Appeal in *MD Biomedical Engineering (M) Sdn Bhd v Goh Yong Khai* [2021] 5 MLJ 408; [2021] 6 CLJ 30 (Tab 12 PBA) held that legal fees and disbursement does not include costs of the action awarded and may be recoverable upon the assessment of damages. His Lordship, Lee Heng Cheong JCA held:

> [26] We are of the considered opinion that the *costs of RM5,000 awarded* by the High Court when the plaintiff's application for removal of caveat was allowed by the court on 12 March 2018, *is only in respect of the legal costs of that application and does not include the plaintiff's claim for legal fees and disbursements under this originating summons for assessment of damages*.

[80] The above authorities have made it clear that legal fees are a specie of special damages which are claimable over and on top of costs.

[81] Further, this court accepts the submissions of the plaintiffs that in an assessment of damages for fraud, the measure is that laid down in *Doyle v Olby Ironmonger* that all losses is claimable on the basis of full indemnity. There was fraud found against the defendants after trial by the High Court leading to the said judgment and this judgment was restored by the Federal Court.

[82] Therefore, the plaintiffs are entitled to the legal fees and expenses on a full indemnity basis.

[83] It follows, that the authority of *Sitti Rajumah & Anor v Mohd Rafiuddin Elmin* which was relied upon by the defendants themselves, in fact, and in law supports the plaintiffs seeking an indemnity.

[84] The authority of *Alex Ting Kuang Kuo @ Ting Kuang Kuo v Credit Corp (M) Sdn Bhd* cited by the defendants further supports the plaintiffs as it is indisputable that based upon the agreements set out in the tables on retainers and refreshers above, the plaintiffs have agreed with their solicitors on the fee structure and how the legal fees are chargeable and these agreements taken collectively, to use the words of His Lordship, Hamid Sultan J (then) would be actual costs.

[85] With respect, this court is in agreement with the principle laid down in *Khairul Sham bin Ahmad v Yesudass a/l Michaelsamy* that special damages consists of monetary expenses incurred or paid. That His Lordship, Faiza Thamby Chik J in *Khairul Sham* used the disjunctive 'or' would mean that incurred or paid are mutually exclusive possibilities ie it could be either incurred or paid and they are not to mean the same thing. I discuss with greater detail below.

[86] On the facts of this case, whether I want to apply the actual costs formula laid down in *Alex Ting Kuang Kuo @ Ting Kuang Kuo v Credit Corp (M) Sdn Bhd* or the full indemnity principle formula laid down in *Doyle v Olby Ironmonger*, in my opinion, the result would be the same. In this case, with the letters of agreements setting out the agreed retainers, the agreed refreshers and the evidence led to support the same, this court has no hesitation to accept the rates contained therein.

[87] For the sake of completeness, even if this court were to apply the formula set out in O 59 r 8, in my view the rates of legal fees set in the several letters of agreements for retainer and refreshers are fair and reasonable.

Legal fees agreed upon but not paid before trial

[88] The issue that now arises for consideration is whether legal charges which have been agreed to be paid, but have yet to be paid, is considered as legal fees incurred, and recoverable by way of special damages.

[89] During cross-examination it was clear that the full amount of the legal charges have not been paid by the plaintiffs. The plaintiffs admitted that only a sum of RM60,000 has been paid (R41 receipts at pp 3 and 51 *Jld* 1).

[90] This court accepts that although the legal charges have not been paid in full, they have been incurred pursuant to the various agreements (see the above tables on retainers and refreshers) entered into between the plaintiffs and their solicitors ie they are actual costs, see *Alex Ting Kuang Kuo @ Ting Kuang Kuo v Credit Corp (M) Sdn Bhd* and that the defendants are liable to indemnify the plaintiffs for the same.

[91] As a matter of fundamental principle, an advocate and solicitor can lawfully be retained to act for a client with his fees to be paid at a later point in time even after the case has been concluded. There is no law to prevent an advocate and solicitor who is so kind as to agree for his fees to be paid only when the client is able to do so. It would be tragic if there is such a law, as that would mean that, many a right would be more illusory than real like in this case when an ice-cream seller takes on the might of a money-lender.

[92] In the UK, it was held that there was nothing wrong for a solicitor to conduct an action on credit, see *Singh and another v Observer Ltd* [1989] 3 All ER 777.

[93] In *Lua & Mansor (suing as a firm) v Tan Ah Kim* [2017] 3 MLJ 371; [2017] 2 CLJ 175, which is a case on matrimonial proceedings, the legal fees agreed upon exclusive of disbursements for filings, transportation etc was a sum of RM5,000 for the application for ancillary relief, another RM20,000 if the court granted the order plus 1.5% of the portion of the value of property or payments ordered. The Court of Appeal speaking through Her Ladyship, Rohana Yusuf JCA held:

> [20] It is also to be noted that the pre-agreed costs by the parties in this case are known as success fees, and not contingency fees because the agreed 15% fees are not contingent upon the defendant winning the case but it were additional fees agreed, in addition to the RM20,000 basic fees. This position taken by the plaintiff is in accord with the finding of the disciplinary committee under the LPA. The High Court in *Chai Chee Chin and Others v Tetuan Zahari Ong & Co* [2005] MLJU 623; [2006] 8 CLJ 84 had recognised such success fees.

[94] *Chai Chee Chin* was a decision by Azmel Maamor J (later FCJ) on a case on land acquisition. Besides *Lua & Mansor*, the success fee agreement structure

was also judicially endorsed by Zaleha Yusof J (later FCJ) in *Ng Kim Hoong & Anor v Tetuan Yh Teh & Quek* [2015] 10 CLJ 561 which is also a case on land acquisition. Such a fee agreement by its very nature is such that the actual amount of the success fee can only be ascertained after the trial including a trial for assessment of damages and hence cannot possibly have been paid before the trial.

[95] Under the Legal Profession Act 1976 ('the LPA'), an advocate and solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of his costs in respect of contentious business done or to be done by such advocate and solicitor, either by a gross sum, or otherwise, and either at the same rate or at a greater or lesser rate at which he would otherwise be entitled to be remunerated with such agreement to be signed by the client, see sub-s 116(1) and (2) of the LPA. I have perused each of the letters of agreements on the contentious business to be done and produced in the Bundle of Documents (R41) referred to in the table on retainers above and am satisfied that they have all been signed by the plaintiffs.

[96] It is with respect, of course, sheer common sense, that the costs need not necessarily be paid before they can be claimed by the advocate and solicitor.

[97] It follows, with respect, when His Lordship, Amarjeet Singh Serjit Singh JC in *Lau Yang Kim v Rescom Australia Sdn Bhd & Anor* held that to 'To be entitled to an award of special damages the items constituting special damages must have been expended before the trial begins', in my view, His Lordship meant that the expenditure of legal fees have been incurred but need not necessarily have been paid.

[98] In the event, the fee structure has been agreed upon before the trial which includes the trial for assessment of damages as has been done in this case, as can be seen in the letters of agreements led in evidence. These legal costs are actual costs as with respect, correctly held by His Lordship, Hamid Sultan J (later JCA) in *Alex Ting Kuang Kuo @ Ting Kuang Kuo v Credit Corp (M) Sdn Bhd.* Even if there is no agreement on legal costs in place before the trial, the legal costs can be still assessed by way of taxation, see s 121 of the LPA.

[99] For the same reason, with respect, I would construe the decision by Kamalanathan Ratnam J in *Minty Holdings Sdn Bhd v JB Properties Sdn Bhd (SK Brothers Realty, third party)* when His Lordship decided 'Special damages belong to that category of damages that can be calculated into dollars and cents at the date of the trial' that His Lordship has equated 'calculated' to mean quantifiable but not necessarily having been paid at the date of the trial.

[100] Such a construction, would harmonize with the cases relied upon by the defendants, with the jurisprudence underlying professional legal remuneration, that legal charges incurred need not have been paid before the trial to be claimable as special damages with support obtained from the line of authorities decided by Justices Azmel Maamor J (later FCJ), Rohana Yusuf JCA and Zaleha Yusof J (later FCJ) as well as the provisions of the LPA mentioned above.

[101] The following costs are often claimed on an indemnity basis as special damages:

(a) costs incurred to seek medical care for eg in road accident or medical negligence cases;

(b) costs incurred to undertake forensic accounting for eg in cases involving breach of trust or fiduciary duties;

(c) costs incurred to engage architects, engineers and quantity surveyors to assess and advise on structural damage and modes of rectification for eg in construction cases;

(d) costs incurred to engage surveyors to carry out survey of boundaries for eg in cases on trespass; and

(e) costs incurred to pay contractors to make good repairs for damage done by the party committing the wrong.

[102] Therefore, why should legal costs be any different?

[103] It is apposite that in a society where the call has always been to abide by the Rule of Law and not to take the law in your own hands, surely the innocent party who comes to court to seek redress for the fraudulent acts suffered, be indemnified against the costs incurred to obtain the reliefs that the law provides. In this case, by reason of the fraud perpetrated by the defendants, the plaintiffs ought to be indemnified in full.

Lack of third party proceedings

[104] The second to fifth defendants submitted that there are items claimed that ought not to be borne by them as these pertains to applications/appeals filed by the plaintiffs themselves or applications by the first defendant. The second to the fifth defendants have tabulated these items which is reproduced below:

Item	Description
2	Application of security for costs filed by the first defendant.
3, 4	Application of interrogatories filed by the plaintiffs. The application was dismissed by the Registrar and the plaintiffs appealed to a judge in chambers.
6	Application by plaintiffs for the Caveat No 279/2005, No 280/2005 and No 147/2007 to be maintained until the disposal of the proceeding.
8	Application by plaintiffs to consolidate Suit No M1-22–203 of 2006 and Suit M3-22–45 of 2008.
9	Application by plaintiffs to consolidate Suit No 22–203 of 2006 and Suit No 52–1571 of 2006.
10	Application by plaintiffs for the caveat No 147/2007 to be maintained until the disposal of the proceeding.
13	Appeal filed by the plaintiffs against the High Court's decision on 1 February 2012 to strike out paras 7.6, 7.7, 9.2 and part of paras 9.1 and 9.3 of plaintiffs' statement of claim. The Court of Appeal had allowed the plaintiffs' appeal and ordered costs of RM10,000 (please refer to pp 98–108 of Jld 1).
17	Appeal filed by the first defendant against the High Court's decision on 28 November 2012.
23	Application filed by plaintiffs to include documents as evidence in the Court of Appeal.
41	Application filed by plaintiffs to strike out notion of motion for Civil Revision dated 23 October 2018.
42	Application filed by the plaintiffs to appeal against the stay of proceeding granted by the High Court on 6 December 2018.
43	Appeal filed by the plaintiffs to appeal against the Court of Appeal order dated 7 March 2019.
45	Appeal filed by the plaintiffs to appeal against the Court of Appeal order dated 7 March 2019.

[105] In arriving at the said judgment, the learned trial judge have found all the defendants to have adopted a modus operandi involving dressing up a money lending agreement with sale and purchase agreements and with the defendants conspiring to fraudulently, by way of trickery and cheating, to have defrauded the plaintiffs.

[106] The said judgment was a composite judgment and if at all the defendants and, in particular, the second to fifth defendants wanted a ruling on their respective contributions vis a vis the first defendant, they ought to have done so by way of third party proceedings pursuant to O 16 r 1(1)(c) of the Rules of Court 2012 which provides as follows:

1 Third party notice (O 16 r 1)

(1) Where in any action a defendant who has entered an appearance —

(2)(a) ...

(b) ...

(c) requires that any question or issue relating to or connected with the original subject matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action, then, subject to paragraph (2), the defendant may issue a notice in Form 18 or 19, whichever is appropriate (which is referred to as a 'third party notice' in this Order), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

[107] This issue could then have been resolved at the trial together with the main action. They did not do so. And, this court is, therefore, of the view it is not for the court at this closing stage of the assessment of the damages to embark on making a decision on an issue that was not pleaded and for which, evidence was not led and a trial not undertaken.

[108] It cannot be gainsaid that the various applications filed and which had to be met or undertaken by the plaintiffs were all part and parcel of the legal action undertaken to pursue their rights.

[109] Whether the attendances were for case managements or pronouncement of decisions or even for that matter, perusing the papers on the amendment on the notice of change of solicitors, dated 18 February 2008, the advocate and solicitor would still be required to cogitate by applying his mind to the same and be ready for any queries that may be posed by the court.

[110] In *Tetuan Azim, Tunku Farik & Wong v Tetuan Ong Partnership* [2021] 6 MLJ 464; [2021] 10 CLJ 258, His Lordship, Ravinthran Paramaguru JCA has these words of advice to advocates and solicitors which all should pay heed:

> It goes without saying that it is expected that counsel who attends case management hearings or mentions should fully apprise himself of the facts and issues of a case in anticipation of assisting the court in the event there are queries.

[111] Wherefore, I find no merit in the defendants' assertion that this court should embark on an exercise to value each and every court attendance.

[112] With the plaintiffs having conceded that there is to be a deduction of RM144,000 for the costs received by them, and save for items 3 and 4 in the table prepared by the second to fifth defendants where the plaintiffs failed in

their application for interrogatories with costs yet to be taxed, the issue of double recovery or unjust enrichment no longer arise.

[113] In the circumstances, with the plaintiffs to be indemnified against the legal charges incurred, I award the plaintiffs' claim for the legal charges but in the sum RM2,604,000. by way of special damages.

[114] We now come to the other item being claimed by way special damages.

HLBB loan for No 59 Taman Ilmu (RM464,433.16)

[115] Under the said judgment, it was held that the modus operandi of money lending on the part of the second defendant included a conspiracy between the defendants to commit fraudulent misrepresentation, that is, to misrepresent by way of trickery and cheating the first plaintiff that the documents he signed, which was prepared by the first defendant, was a money lending agreement but in actual fact the documents he signed was a sale and purchase agreement with a transfer form to transfer, inter alia, the No 59 Taman Ilmu property to the third and fifth defendants. As a result of the defendants' fraudulent acts, the first plaintiff's No 59 Taman Ilmu property was fraudulently transferred to the third to fifth defendants who then charged it to Hong Leong Bank Bhd ('HLBB') (pp 29 and 34–36 grounds of judgment).

[116] The LTJ declared the transfer form for No 59 Taman Ilmu from the first plaintiff to the third to fifth defendants to be null and void (see pp 35–36 grounds of judgment).

[117] The second plaintiff testified that he, who was then only 19 years old, was perforce to obtain a loan from HLBB to settle the loan purportedly owed by his father (the first plaintiff) to the second defendant in the sum of RM225,000 to re-purchase their family home, No 59 Taman Ilmu property lest they be chased out (paras 6 and 15 PWS1, paras 6 and 7 PWS3 and para 5 PWS4).

[118] The particulars and breakdown of the HLBB loan was summarised by the plaintiffs as follows:

(i)	Amount paid by second plaintiff to HLBB:	RM323,263.51;
(ii)	Amount outstanding:	RM141,169.65
	Total:	RM464,433.16

[119] The supporting documentary evidence produced were the HLBB statements from 13 November 2003 to 30 November 2019 (see pp 3–46 *Jld* 7) and HLBB statements from 1 January 2020 to 31 December 2020 (R43 pp

160–162 *Jld* 3).

[120] During the trial, the defendants' learned counsel suggested that since the plaintiffs did not plead that the transfer of No 59 Taman Ilmu from the second plaintiff as wrongful, the plaintiffs are not entitled to claim damages for the No 59 Taman Ilmu property.

[121] However, the part played by the second plaintiff in the No 59 Taman Ilmu property was in fact expressly pleaded as follows:

> ... when D2 and/or its owners threatened to evict P1 and his family for not settling RM225,000 purportedly owing for his No 59 Taman Ilmu loan account, *P2 was forced to sign a sham* sale and purchase agreement at D1's firm to borrow from HLBB and redeem No 59 Taman Ilmu from D2 and/or its owners. (*see para 7.3 statement of claim*).

[122] The above plea was followed by a joint prayer for relief by the two plaintiffs that the transfer of the No 59 Taman Ilmu property from the first plaintiff to the third to fifth defendants be declared null and void and this prayer was allowed with damages — special, general, punitive and exemplary awarded (see para 9 and 9.3 statement of claim).

[123] The defendants also challenged this claim on the ground that the interest levied by HLBB on the loan was not caused by the defendants, is remote and not claimable and submitted that the sum of RM464,433.16 is excessive and unreasonable. Reliance was placed upon the case of *Lai Foh & Sons Sdn Bhd v Skrine & Co (didakwa sebagai sebuah firma)* [2001] MLJU 250 (TAB 14, DBOA) is referred to where it was held that:

> I allow the claim under items (a), (b) and (d) because they are direct losses and I am satisfied that the plaintiff had sufficiently mitigated its losses. Item (e) is also allowed because it was incurred in the course of mitigation of the plaintiff's losses whereby the redemption sum was substantially reduced from a huge outstanding amount under the charges. Item (c) is disallowed because the additional costs was incurred in sale of the lands when the plaintiff's decision to sell the lands was caused by: (i) its impecuniosity; (ii) the demand of the bank as a condition for the withdrawal of the suit; and (iii) the substantial outstanding accumulated interest. *It is settled law that a Defendant cannot be required to compensate the plaintiff for any increased loss suffered, solely attributable to its impecuniosity (see @ 239 Charlesworth & Percy on Negligence 7th ED).* With regard to interest, the plaintiff is entitled to it only from the time when the plaintiff was deprived of the benefit of part of the sale proceeds which was paid to the financial institutions for the redemption of the land titles, ie sometime in the middle of April 1994. The plaintiff is not entitled to interest from 1983 because the redemption sums are inclusive of accumulated interest.

[124] With respect, the case of *Lai Foh & Sons Sdn Bhd* is a case on negligence and breach of duty of care unlike this case which is based upon fraud where the

damages would be assessed on an indemnity basis.

[125] With the relief granted in the said judgment after the LTJ had decided that the No 59 Taman Ilmu property had been transferred from the first plaintiff to the third to fifth defendants fraudulently and therefore being null and void, this would reinstate the first plaintiff's title and displace any right of the third to fifth defendants to deal with the property, including that to resell it to the second plaintiff. It is settled law that you cannot pass a better title than the one you have, *nemo dat quod non habet*, see *Sia Hiong Tee & Ors v Chong Su Kong & Ors* [2015] 4 MLJ 188; [2015] 8 CLJ 1173 (FC). Therefore, the efforts and expenses incurred to recover the No 59 Taman Ilmu property by the plaintiffs were reasonable and ought to be indemnified and it does not lie in the mouths of the defendants to complain that such efforts were unreasonable when the situation was one brought about by they themselves and which the LTJ held had been done fraudulently.

[126] In the circumstances, I award to the plaintiffs, the sum of RM464,433.16 incurred by the second plaintiff to recover the No 59 Taman Ilmu property.

[127] With that we now come to the third item on special damages.

Travelling expenses (RM16,200)

[128] The plaintiffs claim for travelling expenses incurred by the second plaintiff which have been particularised as follows:

No.	Date	Court	Supporting Documents In Jld 2 (page)	Claim (RM)
1.	18 August 2006	Ipoh High Court	1	100
2.	26 September 2006	Ipoh High Court	2	100
3.	26 October 2006	Ipoh High Court	3	100
4.	1 November 2006	Ipoh High Court	4	100
5.	14 November 2006	Ipoh High Court	5	100
6.	15 November 2007	Ipoh High Court	6	100

7.	27 February 2008	Ipoh High Court	7	100
8.	9 May 2008	Ipoh High Court	8	100
9.	05 June 2008	Ipoh High Court	9	100
10.	12 August 2008	Ipoh High Court	10	100
11.	26 August 2008	Ipoh High Court	11	100
12.	11 December 2009	Ipoh High Court	12	100
13.	29 December 2009	Ipoh High Court	13	100
14.	25 March 2010	Ipoh High Court	14	100
15.	7 April 2010	Ipoh High Court	15	100
16.	14 May 2010	Ipoh High Court	16	100
17.	19 May 2010	Ipoh High Court	17–18	100
18.	1 June 2010	Ipoh High Court	19	100
19.	19 January 2011	Ipoh High Court	20	100
20.	10 August 2011	Ipoh High Court	21	100
21.	10 February 2012	Ipoh High Court	22	100
22.	16 February 2012	Ipoh High Court	23	100
23.	24 February 2012	Ipoh High Court	24	100
24.	8 March 2012	Ipoh High Court	25	100
25.	13 March 2012	Ipoh High Court	26	100
26.	25 September 2012	Ipoh High Court	27	100
27.	1 November 2012	Ipoh High Court	28	100

28.	2 November 2012	Ipoh High Court	29	100
29.	12 November 2012	Ipoh High Court	30	100
30.	6 December 2012	Ipoh High Court	31	100
31.	21 December 2012	Ipoh High Court	32	100
32.	27 December 2012	Ipoh High Court	33	100
33.	28 December 2012	Ipoh High Court	34	100
34.	15 January 2013	Ipoh High Court	35	100
35.	28 February 2013	Ipoh High Court	36	100
36.	1 April 2013	Ipoh High Court	37	100
37.	25 April 2013	Ipoh High Court	38–39	100
38.	6 May 2013	Ipoh High Court	40	100
39.	7 May 2013	Court of Appeal	41	300
40.	31 May 2013	Court of Appeal	42	300
41.	11 June 2013	Court of Appeal	43	300
42.	04 July 2013	Ipoh High Court	44	100
43.	23 July 2013	Ipoh High Court	45	100
44.	29 July 2013	Ipoh High Court	46	100
45.	20 August 2013	Ipoh High Court	47	100
46.	21 August 2013	Ipoh High Court	48	100
47.	28 August 2013	Ipoh High Court	49	100
48.	3 September 2013	Court of Appeal	50	300
49.	5 September 2013	Ipoh High Court	51	100
50.	9 September 2013	Court of Appeal	52	300

51.	23 September 2014	Ipoh High Court	53	100
52.	24 September 2013	Court of Appeal	54	300
53.	7 October 2013	Court of Appeal	55	300
54.	30 October 2013	Court of Appeal	56	300
55.	15 January 2014	Court of Appeal	57	300
56.	24 February 2014	Ipoh High Court	58	100
57.	4 February 2014	Court of Appeal	59	300
58.	2 July 2014	Court of Appeal	60	300
59.	23 September 2014	Ipoh High Court	61	100
60.	10 April 2015	Court of Appeal	62	300
61.	12 January 2016	Federal Court	63	300
62.	15 April 2016	Federal Court	64	300
63.	7 June 2016	Federal Court	65–66	300
64.	11 June 2016	Federal Court	67	300
65.	14 June 2016	Federal Court	68	300
66.	20 June 2016	Federal Court	69	300
67.	9 November 2017	Federal Court	70	300
68.	27 April 2018	Federal Court	71	300
69.	28 May 2018	Ipoh High Court	72	100
70.	30 July 2018	Federal Court	73	300
71.	31 July 2018	Ipoh High Court	74	100
72.	1 August 2018	Federal Court	75	300
73.	6 August 2018	Federal Court	76	300
74.	14 August 2018	Ipoh High Court	77	100
75.	30 August 2018	Ipoh High Court	78	100
76.	24 September 2018	Federal Court	79	300
77.	25 September 2018	Ipoh High Court	80	100
78.	11 October 2018	Ipoh High Court	81	100
79.	8 November 2018	Ipoh High Court	82	100
80.	19 November 2018	Ipoh High Court	83	100

81.	22 November 2018	Ipoh High Court	84	100
82.	23 November 2018	Federal Court	85	300
83.	29 November 2018	Ipoh High Court	86	100
84.	5 December 2018	Ipoh High Court	87	100
85.	9 January 2019	Ipoh High Court	88	100
86.	17 January 2019	Ipoh High Court	89	100
87.	26 February 2019	Federal Court	90	300
88.	22 March 2019	Federal Court	91	300
89.	29 April 2019	Federal Court	92	300
90.	29 May 2019	Federal Court	93	300
91.	14 June 2019	Federal Court	94	300
92.	2 July 2019	Federal Court	95	300
93.	23 September 2019	Ipoh High Court	96	100
94.	23 October 2019	Ipoh High Court	97	100
95.	24 October 2019	Federal Court	98	300
96.	11 June 2020	Federal Court	99–100	300
			TOTAL	RM16,200 (there is an error in the calculation, see p 22 PWS1 where it was set out as RM16,000) It has since been clarified by counsel for the plaintiffs that it should RM16,000

[129] The evidence led to support the travelling expenses were:

(a) oral evidence (see paras 13–14 and 20 PWS1); and

(b) supporting documents (see pp 1–100 Jld 2).

[130] The defendants did not dispute the trips the second plaintiff had to make from Sitiawan to Ipoh and to Putrajaya over the years in order to attend to hearings, service and filing of documents. However, the defendants were dissatisfied with:

(a) the amounts claimed, namely RM100 per trip to Ipoh and RM300 per trip to Putrajaya were unreasonable and excessive and there were no documentary proof to support the said claims; and

(b) the fact that the defendants have settled the costs awarded by the Federal Court in 2017.

[131] I find the plaintiffs' assertion that the second plaintiff who is not a registered taxi or commercial driver and therefore would not issue receipts much less for himself for the trips that he had made, to be reasonable. To my mind, a round trip from Sitiawan to Ipoh at RM100 and RM300 per trip to Putrajaya which includes petrol and toll charges plus the wear and tear to the vehicle and bearing in mind that the second plaintiff is not claiming for any wage for the trips are not excessive or unreasonable. No evidence was led by the defendants to rebut this.

[132] As for the defendants' assertion that a staff ought to be engaged to perform this task (see lines 495–510 pp 20–21 notes of evidence dated 8 October 2021), no evidence was produced as to how much less it would be.

[133] As to the lack of use of courier services, the plaintiffs cannot be faulted for being careful to serve by hand especially for filings and service of court documents. In the two particular instances of alleged questionable and suspicious claims for courier and personal service, I find the explanation that the documents were eventually filed by the second plaintiff personally which explains both the 'Kourier' and the acknowledgment stamps of the High Court at Ipoh as well as the Federal Court in Putrajaya (R 42 pp 15 and 98 *Jld* 2) to be reasonable.

[134] In summary, to my mind, the challenge to the travelling expenses claim of RM16,000 premised on double claims, lack of petrol bills, toll receipts and incurring unnecessary expenses by filing/serving documents by hand instead of using the courier service, to be without merit on the grounds that there are no toll for trips from Sitiawan to Ipoh; for trips to Putrajaya payment of toll charges using the Touch n Go facility would not yield any receipts and to save costs the second plaintiff used his own car and by driving himself for the trips undertaken as well as to transport the plaintiffs' counsel for the numerous court attendances without any claim for remuneration for the services, is fair and reasonable.

[135] In the circumstances, I would allow the claim for RM16,000 for travelling expenses.

[136] With that we now come to the final head of claim for special damages, which is that for disbursements, which is labelled by the plaintiffs as search and miscellaneous expenses.

Search and misc expenses (RM51,518.60)

[137] Under this item, the plaintiffs claim for searches made and miscellaneous expenses incurred as a result of this action. They are particularised and again helpfully presented in a table with the references for the supporting documentary evidence duly set out:

No	Date	Supporting Documents	Jld 3 (pp)	Amount (RM)
1.	13 October 2003	Ding & Co Receipt No 2339	1	9,771
2.	1 December 2003	Ding & Co Receipt No 7903	2	25,000
3.	10 December 2003	Pejabat Daerah dan Tanah Manjung Receipt Salinan Sah Borang 14A for 5/15 bahagian Lot No 2564, EMR No 2359, Mukim Sitiawan	3	20
4.	10 December 2003	Pejabat Daerah dan Tanah Manjung Receipt Salinan Sah Borang 14A for 5/15 bahagian Lot No 2563, EMR No 2358, Mukim Sitiawan	4	20
5.	10 December 2003	Pejabat Daerah dan Tanah Manjung Receipt Search for Mukim Sitiawan EMR 2358, 2359	5	40
6.	12 December 2003	Pejabat Daerah dan Tanah Manjung Receipt Salinan Sah Borang 14A for 10/15 bahagian Lot No 2564, EMR No 2359, Mukim Sitiawan	6	20

7.	12 December 2003	Pejabat Daerah dan Tanah Manjung Receipt Salinan Sah Borang 14A for 10/15 bahagian Lot No 2563, EMR No 2358, Mukim Sitiawan	7	20
8.	2 March 2004	Ding & Co Receipt No 1310	8	200
9.	7 April 2004	Pejabat Daerah dan Tanah Manjung Receipt for search on PT 493/2004	9	20
10.	7 April 2004	Pejabat Daerah dan Tanah Manjung Receipt for search on PT 341/1999 Jld 559 Fol 38, PT342/1999 Jld 559 Fol 39, PT548/1998 Jld 549 Fol 62, PT549/1998 Jld 549 Fol 63.	10	80
11.	22 April 2004	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah No PN104828 PT17562, Mukim Sitiawan	11	50
12.	2 June 2004	Pejabat Pengarah Tanah dan Galian Perak Receipt for search on PN104836 Lot 34919 Mukim Sitiawan	12–14	60
13.	4 April 2005	Pejabat Daerah dan Tanah Manjung Receipt for search on GM3895 Lot 2564, Mukim Sitiawan, GM3896, Lot 2563, Mukim Sitiawan	15	40
14.	5 April 2005	Pejabat Daerah dan Tanah Manjung Receipt for Caveat on GM3895 Lot 2594 Mukim Sitiawan	16	60
15.	5 April 2005	Pejabat Daerah dan Tanah Manjung Receipt for Caveat on GM3896 Lot 2563 Mukim Sitiawan	17	60

16.	26 September 2005	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah Borang 14A for PT No 17562, HSD Dgs 5664	18	80
17.	26 September 2005	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah No Pers 28859/1998 Jld 4230 Fol 95	19	80
18.	26 September 2005	Pejabat Daerah dan Tanah Manjung Perak Receipt Salinan Sah No Carian PT1547/2005 Mukim Sitiawan EMR 2358, 2359	20	160
19.	26 September 2005	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah Suratcara No Pers 4808/1996 Jld 1113 Fol 98	21	60
20.	29 September 2005	Pejabat Pengarah Tanah dan Galian Perak Receipt for Salinan Sah Suratcara No Pers 8907/2000 Jld 1469 Fol 19, No Pers 39541/2001	22	140
21.	16 December 2005	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah Suratcara No Pers 1485/1998 Jld 1261 Fol 35	23	60
22.	29 March 2006	HLBB Receipt for Ling Boon Huat being service charges incurred for photostating cheques No 652819, 652824	24	55
23.	5 September 2007	Pejabat Daerah dan Tanah Manjung Receipt for Salinan Sah Suratcara No Pers 507/1993 Jld 22 Fol 90	27	80
24.	5 September 2007	Pejabat Daerah dan Tanah Manjung Receipt for Salinan Sah Suratcara No Pers 1257/1994 Jld 496 Fol 33	28	80

25.	5 September 2007	Pejabat Daerah dan Tanah Manjung Receipt for Salinan Sah Hakmilik Mukim Sitiawan HSM 70/68 Lot 737	29	80
26.	7 September 2007	Pejabat Pengarah Tanah dan Galian Perak Receipt for Salinan Sah Suratcara No Pers 1173/1991 Jld 715 Fol. 50	30	80
27.	7 September 2007	Pejabat Pengarah Tanah dan Galian Perak Receipt for Salinan Sah Hakmilik CT21329 Lot 10554 Mukim Sitiawan	31	80
28.	7 September 2007	Pejabat Pengarah Tanah dan Galian Perak Receipt for Salinan Sah Hakmilik GRN11777	32	80
29.	9 October 2007	Pejabat Pengarah Tanah dan Galian Perak Receipt for Caveat on PN104836 Lot 34919 Mukim Sitiawan	33	150
30.	25 May 2010	Pejabat Pengarah Tanah dan Galian Perak Receipt for Caveat on PN104836 Lot 34919 Mukim Sitiawan	37	150
31.	18 January 2011	Pejabat Daerah dan Tanah Manjung Receipt for Caveat on GM3895 Lot 2564 Mukim Sitiawan	38	150
32.	18 January 2011	Pejabat Daerah dan Tanah Manjung Receipt for Caveat on GM3896 Lot 2563 Mukim Sitiawan	39	150
33.	25 July 2012	Pejabat Pengarah Tanah dan Galian Perak Receipt Salinan Sah Suratcara No Pers 5526/2003	59	80
34.	25 July 2012	Pejabat Pengarah Tanah dan Galian Perak Receipt search for GRN23576 Lot 34 Mukim Pekan Sitiawan	60	40

35.	24 October 2012	Chan & Associates Receipt No 17790 Payment for notes of evidence	61	1840
36.	5 December 2012	Pejabat Daerah dan Tanah Manjung Receipt for search on GM 3895 Lot 2564, GM 3896 Lot 2563, GM 3921 Lot 766 Mukim Sitiawan	62	120
37.	5 December 2012	Salinan Sah Dokumen Receipt for Carian PT 3305/2012, Receipt RM100 for Carian PT 3306/2012	63–64	100
38.	6 December 2012	Pejabat Daerah dan Tanah Manjung Receipt Register High Court Judgment dated 28 November 2012 exh LPH-B Afidavit LPH affirmed 18 January 2013. Also found as exh A Afidavit LPH affirmed 21 December 2012	65	100
39.	14 December 2012	Pejabat Daerah dan Tanah Manjung Receipt for search on GM3895 Lot 2564 Mukim Sitiawan, GM3896 Lot 2563 Mukim Sitiawan, PM1728 Lot 25864 Mukim Sitiawan	66	120
40.	8 January 2013	Pejabat Daerah dan Tanah Manjung Receipt for search on GM3895 Lot 2564 Mukim Sitiawan, GM3896 Lot 2563 Mukim Sitiawan	67	80
41.	13 December 2016	Pejabat Daerah dan Tanah Manjung Receipt for search on GM 3895 Lot 2564, GM 3896 Lot 2563 Mukim Sitiawan	93	80

42.	29 June 2017	Pejabat Daerah dan Tanah Manjung Receipt for search on GM 3895 Lot 2564, GM 3896 Lot 2563 Mukim Sitiawan	94	80
43.	13 August 2018	Receipt No 0382 for Wong & Wong legal fees Inv 1497	95–97	10,000
44.	29 August 2018	Pejabat Daerah dan Tanah Manjung Receipt for private caveat on GM 3896 Lot 2563 Mukim Sitiawan	102	150
45.	29 August 2018	Pejabat Daerah dan Tanah Manjung Receipt for private caveat on GM 3895 Lot 2564 Mukim Sitiawan	103	150
46.	29 August 2018	Pejabat Daerah dan Tanah Manjung Receipt for search on presentation No 730/2017 & 792/2017	104	120
47.	14 September 2018	SSM e-Info Services Invoice for search on Golden Star	108	15.30
48.	9 October 2018	Pejabat Daerah dan Tanah Manjung Receipt for search on GM4506 Lot 13754 Mukim Sitiawan, GM4510 Lot 13758 Mukim Sitiawan	116	80
49.	9 October 2018	Pejabat Daerah dan Tanah Manjung Receipt for search on GM 3895 Lot 2564, GM 3896 Lot 2563, PM 2850 Lot 34419 Mukim Sitiawan	117	120
50.	10 October 2018	Pejabat Pengarah Tanah dan Galian Perak Receipt for search on PN157895 Lot 1073 Bandar Lumut, PN54842 Lot 5045 Mukim Pengkalan Baharu, PN104836 Lot 34919 Mukim Sitiawan, PN6604 Lot 26829 Mukim Sitiawan, PN6608 Lot 26833 Mukim Sitiawan, PN6612 Lot 26837 Mukim Sitiawan	118	240

51.	10 October 2018	Pejabat Daerah dan Tanah Manjung Receipt for search on GM 1830 Lot 3021 Mukim Lumut, GM2163 Lot 4400 Mukim Lumut, GM2335 Lot 4470 Mukim Lumut, PM152 Lot 6597 Mukim Lumut, PM1573 Lot 6604 Mukim Lumut, PM738 Lot 6643 Mukim Lumut, PM742 Lot 6580 Mukim Lumut, GM3895 Lot 2564 Mukim Sitiawan, GM3896 Lot 2563 Mukim Sitiawan, GM4506 Lot 13754 Mukim Sitawan, PM2850 Lot 34419 Mukim Sitiawan	119	440
52.	11 October 2018	Pejabat Daerah dan Tanah Manjung Receipt for search on GRN117151 Lot 14832 Mukim Lumut, GRN45311 Lot 36943 Mukim Sitiawan, GRN45312 Lot 36945 Mukim Sitiawan, GRN45313 Lot 36944 Mukim Sitiawan, HSD34443 PT6805 Mukim Sitiawan, HSD 34444 PT6806 Mukim Sitiawan, PN28346 Lot 18119 Mukim Sitiawan, PN314504 Lot 51793 Mukim Sitiawan, PN354444 Lot 584 Pekan Sitiawan.	120	360
53.	18 January 2019	SSM e-Info Services Invoice for search on Check N Heal Sdn Bhd	137–142	15.30
54.	20 April 2020	HLBB Receipt for Ling Boon Huat (second plaintff's) Bank Statement A/c No 3784001016	157	12

		TOTAL	RM51,518.60

[138] Save for deductions that were to be made for the orders for costs awarded and paid, I observe that there is no challenge to the expenses incurred under this head of claim.

[139] I will, therefore, similarly for the reasons given that the plaintiffs are entitled to be indemnified, allow this claim.

[140] With that I now proceed to deal with the issue of general damages.

General damages (RM1m)

[141] The plaintiffs seek to claim a sum of RM1m by way of general damages.

[142] Reliance was placed upon the authority of the Court of Appeal in *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors* [2017] MLJU 557; [2017] 1 LNS 500 where it was held:

> [14] It is trite that a person injured by another's wrong is entitled to general damages for non-pecuniary such as his pain and suffering, hardship, discomfort, mental distress and loss of amenities of life. There is no standard rule to measure the damage in such cases. The courts usually determine the amount based on a fair and reasonable standards, free from sentimental or fanciful standards, and based upon evidence adduced.

[143] The plaintiffs led evidence that he suffered tremendous hardship, discomfort and mental distress for more than 25 years since that fateful day when the first plaintiff, an ice-cream seller, stepped into the second defendant's office in 1996 to borrow RM5,000. Thereafter, the third defendant brought him to the law firm of his sister (first defendant). Together, as found by the learned trial judge, they conspired to defraud the first plaintiff of all his properties. From the filing of the action on 18 August 2016, the plaintiffs had to undergo more than 15 years of litigation, including exhausting all appeal process and three further reviews at the Federal Court.

[144] During the 15 long years, the plaintiffs had to spend a lot of their time, energy and effort to:

(a) attend numerous meetings with their solicitors to give and take instructions;

(b) to attend to mentions, case managements and hearings in court; and

(c) to work on numerous affidavits.

[145] Evidence was led that the stress of this case had resulted in many quarrels between the plaintiffs and their family members. The first plaintiff had to tend to his cancer-stricken wife while at the same time run up and down to attend to this case.

[146] The second plaintiff testified that his marriage broke up by reason of this case although the defendants produced his former wife as a witness who testified that their marriage broke down by reason of her having been assaulted by him on three occasions. His wife left him leaving their young son under his care.

[147] The plaintiffs asserted that at the tender age of 19 years of age, by reason of this case, the second plaintiff was perforced to go to the first defendant's firm to sign agreements to obtain a loan from HLBB to 're-purchase' the No 59 Taman Ilmu family home so as to avoid eviction and ever since, he was unduly burdened with the responsibility of servicing the HLBB loan. The financial constraints saw him having to personally drive his lawyers for the numerous court attendances, do their own filing and service of court papers, the inference to be drawn was so as to save costs.

[148] This court accepts that it must have been a harrowing experience fraught with emotional distress for the first plaintiff to leave his cancer-stricken wife each time he had to call at his solicitors' office to go through numerous affidavits to address the numerous applications before the trial could even commence, some of which, were frivolous but put up by the defendants to bring undue pressure upon the plaintiffs and an example given by learned counsel for the plaintiffs was having to fight off the defendants' application for security of costs not once but twice.

[149] Evidence was led that even though bedridden, and in her dying moments, the first plaintiff's wife insisted that the plaintiffs should not give up in their effort to seek justice in court. The first plaintiff's regret is that his wife did not live long enough to see justice being done.

[150] In claiming for RM1m, the plaintiffs were guided by the High Court authority of *Eu Sim Chuan @ Eu Sam Yan & Anor v Kris Angsana Sdn Bhd* [2007] 1 MLJ 734 where Azmel Maamor J (later FCJ) awarded the plaintiffs their claim of RM1m for general damages for mental distress and hardship in seeing their bungalow home damaged by the works carried by the defendant developer next door. His Lordship's words bear reproduction:

> 8. General Damages For Mental Distress, Hardship etc
>
> There are ample evidence that the damage to the property had caused severe mental distress and hardship to the plaintiffs thereby resulting in the health conditions of

A

> the second plaintiff to deteriorate drastically. The whole members of the plaintiffs' family had faced great hardship, getting transferred from one house to another. The first plaintiff, who had personally supervised the construction of the house, must be feeling very painful and sad to see the house being damaged due to the activities carried out by the defendant. I allow the claim of RM1m under this item.

B

[151] The case of *Eu Sim Chuan* went up on appeal to the Court of Appeal and the appeal was dismissed, see *Kris Angsana Sdn Bhd v Eu Sim Chuan @ Eu Sam Yan & Anor* [2007] 5 MLJ 13; [2007] 4 CLJ 293. On the damages for RM1m, His Lordship Suriyadi Halim Omar JCA (later FCJ) said:

C

> [44] We found no error in the findings of the learned judge when he had ordered RM1m also as part of the general damages. Practitioners are well aware that general damages represent losses which are not easily quantifiable, with losses in the like of mental stress, hardship etc as suffered by the respondents, also falling under the heading. There was ample evidence to show that the health of the second respondent indeed had taken a dive, due to the continuous and persistent mental distress of seeing their home slowly disintegrating, followed by further hardship when moving house.

D

E

[152] Having defrauded the plaintiffs of their properties through trickery and cheating as found by the learned trial judge, refusing to obey court orders which saw them being found guilty of contempt of court on more than one occasion and in the process taking the plaintiffs through 15 years of litigation with its attendant feelings of anxiety as and when an application is being pursued, heard and seemingly disposed off only to be met with an appeal and yet more applications with more appeals and in the process, with both plaintiffs losing their wives, one through disease and another through divorce proceedings, I am of the view that the RM1m sought by the plaintiffs is reasonable for all the mental distress and hardship suffered by them.

F

G

[153] With that we now come to the final head of damages that was awarded in the said judgment, that is punitive and exemplary damages.

Punitive and exemplary damages (RM1m)

H

[154] Punitive and exemplary damages are one and the same, whereby the terms have been used interchangeably, see para 33 *Sambaga Valli*'s case.

[155] In *Taz Logistics Sdn Bhd v Taz Metals Sdn Bhd & Ors* [2020] 10 MLJ 791 at p 804; [2020] 5 CLJ 426 at p 437 para 64 His Lordship, Darryl Goon J (now JCA) accepted that the upper limits of exemplary damages should not be more than three times of the basic damages awarded. His Lordship cited with approval the decision of Lord Woolf in *Thompson v Commissioner of Police of the Metropolis; Hsu v Same* [1997] 3 WLR 403 at p 418 which is reproduced

I

below:

> In deciding upon what should be treated as the upper limits for exemplary damages we have selected a figure which is sufficiently substantial to make it clear that there has been conduct of a nature which warrants serious civil punishment and indicates the jury's vigorous disapproval of what has occurred but at the same time recognises that the plaintiff is the recipient of a windfall in relation to exemplary damages. As punishment is the primary objective in this class of case it is more difficult to tie the amount of exemplary damages to the award of compensatory damages, including aggravated. *However in many cases it could prove a useful check subject to the upper limits we have identified if it is accepted that it will be unusual for the exemplary damages to produce a result of more than three times the basic damages being awarded* (as the total of the basic aggravated and exemplary damages) except again where the basic damages are. (Emphasis added by His Lordship Darryl Goon J.)

[156] And, His Lordship, Darryl Goon J went on to observe that:

> [57] As for exemplary damages, based on the authorities, although there are principles which would guide a court in the assessment of the quantum of exemplary damages, there are no hard and fast rules. Much would depend on the circumstances and factual matrix of the case.

[157] The plaintiffs submitted that the conduct of the defendants prior to the said judgment was sufficient for the court to award punitive damages in favour of the plaintiffs. And, their conduct post the said judgment was no better. They were found guilty of contempt of court not once by twice, the second time by the Federal Court which was satisfied beyond reasonable doubt that the defendants and their lead counsel were guilty of contempt of court.

[158] The facts that obtain in this case calls to mind the following words of His Lordship, Mohd Hishamudin Mohd Yunus J (later JCA) in *HSBC Bank Malaysia Bhd (formerly known as Hongkong Bank (M) Bhd) v Tirathrai Sdn Bhd (formerly known as T Jethanand Sdn Bhd)* [2009] 7 MLJ 168; [2009] 1 CLJ 286 to be particularly apt in the circumstances of this case:

> [88] ... But the present case has a special aggravating element and that is the manner the act of disobedience was done by the respondents. It has an element of subtlety and cunningness. By engaging lawyers and other professionals and invoking the legal process, the acts have an outward appearance of professionalism, sophistication and legality. Such a modus operandi often makes the victim and, indeed, the judicial and legal system itself, helpless. Because of the subtle method employed and the ruthless utilisation of the court process, it is often an uphill task for the aggrieved party to convince a court of law that, behind the facade of 'legality' employed by his adversary, he is in fact being victimised or being mercilessly and unjustly deprived the fruits of his litigation; unless the victim is a person of means (like the plaintiff in the present case, being a bank with financial resources at its disposal) and able to employ an able prosecutor.

[159] Here the victims, the plaintiffs are not persons of means. They were most fortunate to be able to have a set of very kind solicitors who obviously took their professional calling of that of an honourable profession very seriously and were prepared to provide their able services first and to seek payment in full later.

[160] Considering all the facts and circumstances and the conduct of the defendants pre and post judgment, the plaintiffs claim for a further sum of RM1m as punitive or exemplary damages against the defendants is reasonable so as 'to teach the wrongdoer that tort does not pay' (per Lord Devlin in *Rookes v Barnard* [1964] 1 All ER 367.

[161] The sum total of the award of damages is:

(a) special damages:	
(i) legal fees	
(A) Retainer	RM2,345,000
(B) Refresher	RM403,000
	RM2,748,000
Less costs paid	RM144,000
	RM2,604,000
(ii) Hong Leong Bank Bhd loan for the No 59 Taman Ilmu property	RM464,433.16
(iii) Travelling expenses	RM16,000
(iv) Search and miscellaneous expenses	RM51,618.60
Sub-total	RM3,135,951.76
General damages	RM1,000,000
(b) Punitive and exemplary damages	RM1,000,000
Total	RM5,135,951.76

INTEREST

[162] The plaintiffs seek interest on the damages awarded at 5%pa from the date of the filing of the writ until full realisation.

[163] The defendants assert that the plaintiffs are not seeking the recovery of a debt where they are being kept out of the use of money and, therefore, interest

should not run from the date of the filing of the writ but from the date of assessment after the quantum has been ascertained.

[164] However, sub-s 11(1) of the Civil Law Act 1956 which is reproduced below provides the court with the power and discretion to order interest to run from the date when the cause of action arose in an action for damages:

> *In any proceedings tried in any court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.*

[165] Pursuant to O 42 r 12 of the Rules of Court 2012, interest can be allowed at 5%pa on the judgment debt as from the date of judgment until the date of full realisation, the judgment debt being the judgment sum made up of damages and pre-judgement interest thereon, see *Trans Elite Equipment Rental Sdn Bhd v PSC-Naval Dockyard Sdn Bhd* [2003] 4 MLJ 30; [2003] 1 MLRH 706; [2003] 4 CLJ 270.

[166] However, just as what was adjudged in *Eu Sim Chuan @ Eu Sam Yan & Anor v Kris Angsana Sdn Bhd*, I allow interest on the damages awarded from the date of the filing of the writ until full realisation. However, instead of 8% pa the interest rate shall be 5%pa as determined by the Right Honourable Chief Justice vide Practice Direction No 1 of 2012.

Apportionment of liability among the five defendants

[167] The final issue is whether the damages ought to be apportioned as between the defendants inter se. The said judgment does not say so. In *Lembaga Kumpulan Wang Simpanan Pekerja v Edwin Cassian a/l Nagappan @ Marie* [2021] 5 MLJ 253; [2021] 7 CLJ 823 (FC), the Federal Court held that a judgment against more than one judgment debtor would mean that the liability is joint and several. As I had mentioned earlier, the second to fifth defendants could have availed themselves of the provision of s 10 of the Civil Law Act 1956 (Revised 1972) and O 16 r 1(1)(c) Rules of Court 2012 for this issue to be determined at trial. They did not. I, therefore, decline to accede to the second to fifth defendants' prayer for the liability of the defendants to be apportioned at this stage without the benefit of this issue having been tried.

CONCLUSION

[168] In the upshot, following the trial on assessment of damages claimed I asses the damages payable by the defendants to the plaintiffs to be RM5,135,951.76 with interest thereon at 5%pa from the date of the filing of

the writ (18 August 2006) until the date of full realisation with costs.

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh